



# TRANS LEGAL MAPPING REPORT

Recognition before the law

2019  
3<sup>rd</sup> edition

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### Suggested citation

ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (Geneva: ILGA World, 2020).

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

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# Foreword

by Jabu Pereira, Chair, ILGA World Trans Steering Committee

The ILGA World Trans Steering Committee is pleased to announce the launch of the 2019 *Trans Legal Mapping Report*, now in its third edition, which is one of the key outputs of ILGA World's Gender Identity and Gender Expression Programme.

Complementing ILGA World's *State Sponsored Homophobia Report*, which looks at laws and legislation around the world that seek to criminalise, recognise or protect same-sex behaviour, the *Trans Legal Mapping Report* draws attention to how laws in different countries recognise the rights of trans people to change their identity markers on official documents. In this third edition, the report features the voices of trans communities to the experience of being criminalised, often arbitrarily, from every corner of the world.

It is a difficult time for trans communities globally, which is reflected in the regression or stagnation in legal gender recognition rights in countries such as Guatemala, Hungary, Mongolia, New Zealand, the United Kingdom, the United States and Uruguay, and the potential for regression in India and Nepal. Yet, since 2017, there has been firm progress in countries such as Australia, Canada (for non-binary people), Chile, Colombia (for children), Costa Rica, and Pakistan. I am hopeful that my own country – South Africa – has begun to engage on the need for new legislation that places the right of trans people to self-determination at the forefront on what a rights-based approach to gender identity ought to be. The ever-changing shifts in the diversity of trans people is worthy of celebration as we continue to push against repressive state laws which aim to enforce a particular gender ideology that embodies conservative nationalism.

We need many more studies in the future that celebrate our challenges and gains in our right to self-determination, our right to gender affirming care and to live in a world that does not systemically and physically harm us.

I am confident that you will enjoy this read – it is a valuable resource in the world we currently live in. Once more, thank you and congratulations to the Gender Identity and Gender Expression Programme and the research team.

From Luz Elena Aranda (Mexico) and Tuisina Ymania Brown (a proud trans *fa'afafine* from Samoa), ILGA World Co-Secretary Generals

Now more than ever, we need accurate data, research and information to inform not only ILGA World's global activism on trans issues, but more importantly, to help trans activists and allies on the ground with readily available resources, relevant to their contexts. Well done to the ILGA World Trans Steering Committee, the Gender Identity and Gender Expression Programme and the research team for this much needed piece of work.

# Author's Preface

by Zhan Chiam

This third edition of the Trans Legal Mapping Report represents a departure from the earlier versions in 2016 and 2017. While we continue to research legal gender recognition, we have now added criminalisation examples to countries where information is available – both through desk-based research and a combination of desk-based research and verification by trans activists in those countries. The decision to add criminalisation is a political one, as well as one borne out of necessity. We know anecdotally that trans people, especially trans women, are disproportionately targeted by institutions of authority in almost every country in the world, and one method of such targeting is the use of laws, arrest and detention. That is why, in this edition, when examples of such targeting has taken place, we have classified them as either “*de facto*” or “*de jure*” criminalisation. This is to indicate the impact of the discrimination on trans persons – that the systemic targeting of trans people using seemingly innocuous laws such as those related to public spaces, is just as damaging as so-called “cross dressing” laws which overtly target gender expressions.

I cannot emphasise how invaluable on-the-ground feedback has been to both aspects of this report, and why, after four years, I am more convinced than ever that pure desk-based research on the legal rights of trans people will simply be incorrect, or at best, incomplete. The lived realities of trans persons in every region of the world cannot be learnt by looking just at the laws and cases, but by gaining trust, making contact and finding out how those laws are applied to the communities. This year in Africa, Oceania and West and Central Asia, we have been able to confidently add many more countries to our legal gender recognition data, thanks to regional collectives or groups sharing their information, and also better contacts in those regions.

The report is set out according to ILGA World's six regions of Africa, Asia, Europe, Latin America and the Caribbean, North America and Oceania; and then broken down country-by-country within those chapters. In countries where we are less confident of information we have sourced, we have been similarly restrained in our reporting.

## Legal gender recognition

We define legal gender recognition as laws, policies or administrative procedures and processes which set out how trans and gender diverse people can change their sex/gender marker and names on official identity documents. We are delighted to see that in some jurisdictions – **Australia** (the state of Victoria), **Costa Rica** and most of **Canada** – there is now the option to remove gender markers altogether. In basic terms, the report sets out whether a process is established in primary legislation, through a court application, in an administrative rule, in policy, or simply not defined. The different processes for sex/gender marker change and name change, and the links between the two, if any, are also set out. Name change processes are especially relevant for countries where the sex/gender marker change process is absent or, if present, is onerous, medicalised, pathologised and, therefore, restrictive. As this report reveals, in some countries, name change processes are equally onerous. Converse to other regions, in the Pacific such as in **Fiji**, name change may not be desired at all, as names have strong cultural significance related to family ties, lineage and legacy. In these situations, gender marker change may be the only desired form of legal gender recognition.

However, overall, the aims remain to achieve legal gender recognition through a self-determination model. That is, without requirements such as surgical, hormonal or sterilisation criteria, needing a person to be divorced, not have dependent children, be kept in psychiatric facilities, or undergo a “real life test”, etc. We are pleased to add these countries to the list since the 2017 report: **Australia** (more states), **Belgium**, **Brazil**, **Chile**, **Costa Rica**, **France**, **Greece**, **Luxembourg**, and **Portugal**.



Meanwhile the possibility of legal gender recognition at all is already a huge achievement in other countries and we can report that this is now possible in **Pakistan**, while **Bangladesh** gives hijras access to voting rights, and discussion continues around the change of sex marker Article in the Civil Code in **Vietnam**.

We continue to record where legal gender recognition affects children and young people, what the requirements are, whether they allow for self-determination or have age limits. Progress has been made in terms of either allowing children and young people access to a parallel legal gender recognition process in **Colombia, Ecuador and Uruguay**, or through the partial lowering of age limits such as in **Chile**.

At the end of 2017, we were looking forward to the approval and adoption of the 11<sup>th</sup> revision of the *International Statistical Classification of Diseases and Related Health Problems (ICD-11)* by the World Health Assembly in May 2018. The approval and adoption of ICD-11 meant that trans-related categories were finally removed from the chapter on Mental and Behavioural Disorders, and a new code of “gender incongruence”, with sub-codes for adolescence and adulthood, and children, now appears in a new chapter on Sexual Health. Yet despite this significant progress, its implication on rights for trans people around the world has been much slower.

The period from 2018 to the release of this publication in 2020 has been marked by uncertainty, backlash and attacks on our communities, and this is reflected in the report. Gender ideology, in the form of conservative positionings around the fixity of “biological” sex, the emergence and confidence of positionings by what is ignobly known as Trans Exclusionary Radical Feminists (TERFs), and right-wing politicians positing LGBT rights against national identities, have all had detrimental effects on our communities. Studies tell us<sup>1</sup> how grossly under-resourced trans-led organisations are – a fascinating contrast to how these same conservative movements say how well-resourced trans (in the case of TERFs) and LGBT (in the case of right-wing politicians) groups are. The detrimental effects of these movements are reflected in this edition versus the 2017 or 2016 editions of the report – in every region of the world where we have been documenting legal gender recognition, regressions have occurred.

However, wins have also taken place, notably in Europe and Latin America. In Europe, thanks in some part to the European Court of Human Rights decision in *A.P., Garçon and Nicot v France*, **Belgium, France, Greece, Luxembourg and Portugal** have non-medical, non-pathologising laws on gender marker change. Since January 2019, **Germany's** Constitutional Court paved the way for intersex adults to have the marker “divers” on birth certificates.

In Latin America, progress continues, also in part due to an effective regional human rights framework and the advisory opinion of the Inter-American Court of Human Rights in January 2018 on the right to gender identity and protection of family ties between same-sex couples.<sup>2</sup> **Brazil, Chile and Costa Rica** have, since the last edition of this report, allowed gender marker change through a self-determination model. At the same time, Chile, **Colombia** and **Uruguay** have advanced with respect to those under 18 years of age (only for 14-18 year olds in the case of Chile), and **Argentina** allows for a multiplicity of gender markers.

For the rest of the world, **Pakistan** now recognises trans identities with the *Transgender Persons (Protection of Rights) Act 2018* and ostensibly allows gender marker change without prohibitive requirements, while **Canada** advances on non-binary markers in ten out of thirteen provinces and territories. **Botswana** and **South Africa** also had court wins in recognising trans person's gender identities in legal documents and in the prison system respectively. The latter underscores the reality interactions of trans people with criminal justice systems, and the necessity of taking a more nuanced approach to legal gender recognition advocacy.

<sup>1</sup> Howe, E, Frazer, S, Dumont, M. and Zomorodi, G. (2017). *The State of Trans Organizing (2nd Edition): Understanding the Needs and Priorities of a Growing but Under-Resourced Movement*. New York: American Jewish World Service, Astraea Lesbian Foundation for Justice and Global Action for Trans Equality: <https://www.transfund.org/wp-content/uploads/2017/12/The-State-of-Trans-Organizing-2016.pdf>

<sup>2</sup> Inter-American Court of Human Rights, opinión consultiva oc-24/17: [http://www.corteidh.or.cr/docs/opiniones/seriea\\_24\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf)

## **Criminalisation**

In recording cases of criminalisation against trans communities, we are in some ways experimenting with the form, and offer one method of how to report such information. We owe a great deal to organisations such as Human Rights Watch who have for many years recorded these instances of discrimination against our communities, as well as Human Dignity Trust's thorough report, *Injustice Exposed*, in 2019. It is in the area of criminalisation that verification from trans communities and activists is especially crucial – without these it would simply not be possible to track the vast majority of cases of trans people who are targeted arbitrarily under a range of laws, such as public nuisance, indecency, good manners and morality, drug related offences, vagrancy, loitering, beggary, impersonation, sex work related offences, and consensual same-sex activity. In only a handful of countries are trans persons explicitly criminalised, either through a piece of legislation or religious law or edict (which often have the force of law) and are easily classified as so-called “cross-dressing” laws. This is the case in the following thirteen countries: **Brunei, the Gambia, Indonesia, Jordan, Kuwait, Lebanon, Malawi, Malaysia, Nigeria, Oman, South Sudan, Tonga, and the United Arab Emirates**. Meanwhile, although Iran's Islamic Penal Code is slightly more vaguely worded in this respect, its impact is no less severe on people who transgress gender norms in their gender expressions.

We are at a turning point in trans organising and advocacy, and I hope that the snapshot this report provides encourages cross-regional, cross-border and, most importantly, cross-movement mobilisation. There is an undeniable commonality in the obstacles our communities face, which means that there could and should also be a way to strategise collectively. As this report is being finalised, we find ourselves in the middle of a global pandemic where, all over the world, trans movements are facing new challenges to survival and holding the line on our rights.

# *A practical note on using this report*

## **Legal gender recognition**

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

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

Where information is available, we also include Bills which are being considered before Parliaments, pending Court cases, committee recommendations being considered by governments, and consultations on gender recognition, progressive or otherwise. Our aim in this regard is to point

towards movement in this area, and it is up to those interested to monitor their development over the next 12 months.

We are grateful for the “Legal and Social Mapping” research conducted by Transgender Europe’s *Transrespect versus Transphobia Worldwide* project (TvT), the Open Society Foundations’ *License to Be Yourself: Law and Advocacy for Legal Gender Recognition of Trans People*, the Southern African Trans Forum and the South Africa Litigation Centre’s *Laws and Policies Affecting Transgender Persons in Southern Africa* and the United Nations Development Programme—Asia Pacific Transgender Network’s *Legal Gender Recognition: A Multi-country Legal and Policy Review in Asia*. In addition, we are encouraged by trans-led research from the Pacific conducted by the Pacific Sexual and Gender Diversity Network and in West Asia/North Africa by Qorras, who both provide much needed expertise in their regions. Human Rights Watch’s research in many countries is also an invaluable resource. All these resources should be read together, for a unified approach to legal gender recognition research and advocacy.

### **Criminalisation**

Only a small number of countries in the world expressly criminalise trans people’s identity or behaviour, or those who are perceived to be trans of who transgress gender norms. Often in the form of so-called “cross dressing” laws, they explicitly prohibit a “male person posing as a woman” or vice versa. In those states, legal gender recognition is also not available, which then leaves trans people, or those perceived to be, at risk of arrest and prosecution.

However, that is only the tip of the iceberg as trans communities know, and so for this edition we wanted to paint a picture of how trans people interact with the criminal justice systems in different countries, and document what laws are used against whom and how. As a result, most of the examples will be classified as *de facto* (versus *de jure*) criminalisation, regardless of the region.

As with 2016 and 2017, this report would not be possible without the input of local trans activists who reviewed data, gave advice on the situation in their countries and clarified translations. West and Central Asia, North Africa and Pacific nations continue to be under-represented in this report. The reasons are varied, and include but are not limited to safety issues, uneven levels of trans organizing and sometimes, in the case of legal gender recognition, the perceived lack of relevance to local needs and concerns.

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

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

## Acknowledgements

This project is only possible because of the expertise of the hundreds of trans and LGBTI activists who are referenced throughout, without whom we could not have confidently verified all the data in this report. We are especially grateful to **Florence Ashley**, **Sasha Buchert** and **Rikki Nathanson** for their insightful contributions to the regional introductions. Thanks are also due to the excellent English-Spanish translation team led by **María Laura Speziali** and **Silvina Katz**, and to **Lukas Berredo** for his design and layout work. **Julia Ehrt**, **Lucas Ramón Mendos** and **Daniele Paletta** provided ongoing support and feedback on the conceptualising and production of this report. In 2018, **Hua Boonyapisompan** laid the groundwork for a blueprint which will benefit future editions of this report. As always networks such as the **regional ILGA offices**, the **Asia Pacific Transgender Network (APTN)**, **Gender DynamiX**, the **Pacific Sexual and Gender Diversity Network**, **RedLacTrans**, **Transgender Europe (TGEU)** and **Qorras** were invaluable in connecting us with in-country organisations and sharing their research. Finally, year after year, special thanks go to **Aengus Carroll** and **Helen Nolan** for their generous guidance and encouragement, and uncanny ability to see the bigger picture ahead.

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# Africa

by Nigel Timothy Mpemba Patel and Rikki Nathanson\*

## 1. Introduction

The current African criminal law and legal gender recognition landscape largely impacts upon transgender and gender diverse people in discriminatory ways. This overview aims to draw together trends on ways that the law has been used for and against transgender and gender diverse people on the continent.

Persecutory criminal laws in many African states mean that transgender and gender diverse people are stopped and searched, arrested, and detained for being who they are. Moreover, transgender and gender diverse people are also subjected to harassment and abuse that stems from discriminatory law enforcement and law enforcement practices.

The lack of legal provision for gender recognition across most of the continent means that many transgender and gender diverse people have a gender identity that is not reflected in their official documents. This exposes transgender and gender diverse people to violence and denies them of their full legal rights and citizenship. Additionally, where states do have gender recognition laws in place, barriers to making use of these laws similarly result in transgender and gender diverse people's fundamental human rights being violated.

However, amidst the difficulties that the current legislative and socio-political landscape present, transgender and gender diverse people in a number of states have secured significant judicial victories in the protection of human rights related to gender identity. Court rulings in states such as **Botswana**, **Kenya**, **South Africa**, and **Zimbabwe** have asserted transgender and gender diverse people's right to dignity, equality and freedom.

## 2. The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (ACHPR) is one of the most significant regional treaties.<sup>3</sup> It sets out the fundamental human rights to which all African states have ascribed:

- Article 2: "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune birth or other status."
- Article 3(1): "Every individual shall be equal before the law."
- Article 3(2): "Every individual shall be entitled to equal protection of the law."
- Article 4: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

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<sup>3</sup> Other relevant regional treaties include the African Charter on Democracy, Elections and Governance; the African Youth Charter; The Maputo Protocol (also known as The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa); The Maputo Plan of Action 2016–2030 for the Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights.

- Article 5: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”
- Article 6: “Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”
- Article 19: “All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.”
- Article 28: “Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.”

Taken collectively, these articles provide that no person’s fundamental human rights should be denied because of discrimination. Thus, the protection of transgender and gender diverse people falls squarely within their ambit.<sup>4</sup> Additionally, the African Commission on Human and Peoples’ Rights<sup>5</sup> (the African Commission) has explicitly included gender identity and sexual orientation within its mandate. In April 2014 the African Commission adopted Resolution 275 on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity.<sup>6</sup>

Accordingly, the criminalisation of transgender and gender diverse people is incompatible with the ACHPR and Resolution 275 of the African Commission.<sup>7</sup> Whereas, state provision for legal gender recognition is in line with the rights protected by the ACHPR and Resolution 275 of the African Commission.<sup>8</sup>

### 3. Criminalisation of transgender and gender diverse people

A majority of African states have constitutions that contain a Bill of Rights, which in the main, mirror the Universal Declaration of Human Rights. Transgender and gender diverse people are entitled to the protection of their national constitutions. The criminalisation of transgender and gender diverse people deprives them of this legal protection. Criminalisation creates a culture of violence where state and non-state actors violate transgender and gender diverse people’s rights with impunity. It also prevents transgender and gender diverse people from accessing education, employment, healthcare and housing.

#### 3.1. Direct criminalisation (*de jure* criminalisation)<sup>9</sup>

The criminalisation of transgender and gender diverse people occurs in a variety of ways. The **Gambia, Malawi, Nigeria, and South Sudan** directly criminalise diverse gender expression. These state’s laws are underpinned by the idea that gender exists in fixed binary and so they target people whose gender identity and expression is perceived as non-conforming. Thus, these laws that directly criminalise diverse gender expression constitute discrimination in and of themselves. In

<sup>4</sup> Note the universalist language of the provisions, for example, “every individual” and “all people”, the inclusive focus, and non-discrimination position.

<sup>5</sup> The quasi-judicial body tasked with interpreting the ACHPR.

<sup>6</sup> African Commission on Peoples’ and Human Rights., <https://www.achpr.org/sessions/resolutions?id=322>.

<sup>7</sup> For example, the criminalisation of transgender and gender diverse people violates Article 2.

<sup>8</sup> For example, legal gender recognition gives effect to Article 5.

<sup>9</sup> *De jure* criminalisation in this context means legal provisions that explicitly criminalise transgender and gender diverse people.

the cases of the Gambia, Malawi and South Sudan, these laws have their origins in **British colonialism**. Whilst in the case of Nigeria, its laws have their origins in **Sharia Law**.

### **3.2. Indirect criminalisation (de facto criminalisation)<sup>10</sup>**

While many African states do not directly criminalise diverse gender expression (and even where they do), in practice transgender and gender diverse people are criminalised through various other legal provisions.

#### *Public order, public indecency and vagrancy offences*

At least 11 states use public order, public indecency and vagrancy offences to target transgender and gender diverse people.<sup>11</sup> Many of these public order, public indecency and vagrancy offences find their origins in the British colonial era.<sup>12</sup> These provisions are often vaguely worded and so are used in arbitrary ways by discriminatory law enforcement authorities. The effect of this form of criminalisation is that it limits transgender and gender diverse people's freedom of movement.

#### *Criminalisation of consensual same-sex sex and conduct*

In at least 13 states where consensual same-sex sex and conduct are criminalised these laws have also been used to arrest and detain transgender and gender diverse people.<sup>13</sup> The African states that criminalise consensual same-sex sex and conduct largely do so through statute inherited through British colonisation, common law, and Sharia laws. These laws that criminalise same-sex sex and conduct constitute discrimination in and of themselves. The criminalisation of transgender and gender diverse people under these laws is often based on the conflation of gender identity and sexual orientation.

#### *Impersonation, misrepresentation, and fraud laws*

In states such as **Zambia, Burundi and Kenya** impersonation, misrepresentation, and fraud laws are used against transgender and gender diverse people. For example, under these laws, transgender and gender diverse people whose gender expression is perceived as not conforming to strict societal norms on gender or the gender recorded in their official documents are considered to be misrepresenting themselves, impersonating another or attempting to commit theft and fraud. Thus, these laws that have the legitimate aim of preventing harmful deceitful acts are used in unjust ways against transgender and gender diverse people. This issue highlights the link between criminalisation and legal gender recognition. It illustrates that in order to fully address the criminalisation of transgender and gender diverse people, it is necessary to have laws that allow legal gender marker and name changes.

#### *Criminalisation of sex-work and associated conduct*

Across the continent laws that criminalise sex-work and associated conduct have been used to arrest and detain transgender and gender diverse people based on their perceived or actual participation in sex work. These laws generally disproportionately affect transgender and gender diverse people who are more likely to have engaged in sex work than the general population, in part due to exclusion from formal education and employment. This emphasises how the decriminalisation of sex work is integral to protecting the human rights of transgender and gender diverse people.

<sup>10</sup> *De facto* criminalisation in this context means legal provisions that do not on the face of them criminalise transgender and gender diverse people, however, are used in practice as the legal basis to stop and search, arrest, and detain transgender and gender diverse people.

<sup>11</sup> Botswana, Gambia, Lesotho, Malawi, Morocco, Namibia, Rwanda, Tunisia, Uganda, Zambia, and Zimbabwe.

<sup>12</sup> Botswana, Gambia, Malawi, Uganda and Zambia.

<sup>13</sup> Burundi, Cameroon, Gambia, Ghana, Liberia, Malawi, Mauritius, Morocco, Nigeria, Tanzania, Uganda, Zambia, Zimbabwe.

### *Criminalisation of drug use*

In states such as **South Africa** transgender and gender diverse people are often indirectly and disproportionately criminalised under laws that prohibit drug use. As noted in a group interview with transgender and gender diverse participants held with Gender DynamiX,<sup>14</sup> these types of laws are used against transgender and gender diverse people based on their actual or perceived drug use. Often where no actual drug use or possession had occurred, transgender and gender diverse people reported being arrested under these laws and later released without charge. Furthermore, where actual drug use was involved the transgender and gender diverse participants reported being specifically targeted because of their gender identity.

### *Without law*

There were cases across the continent in states such as **Zimbabwe, Burundi** and **Mauritius** where transgender and gender diverse people were arbitrarily searched, arrested and detained without being given any reasons at all. This typifies the trend of police impunity in the region. Law enforcement officers across the continent repeatedly physically and verbally abuse transgender and gender diverse people with or without any legal reason for search, arrest and detention. The law enforcement officers who perpetrate these discriminatory acts are then generally treated with impunity, leaving their transgender and gender diverse victims with little recourse to legal protection.

## **4. Judicial victories against the criminalisation of trans and gender diverse people**

In the face of laws and law enforcement practices that criminalise transgender and gender diverse people, transgender and gender diverse activists have used the court to challenge discrimination based on gender identity and expression.<sup>15</sup>

In **Zimbabwe**, Rikki Nathanson, a transgender woman, successfully brought a case against the police for arresting and detaining her for using the woman's bathroom in a hotel.<sup>16</sup> Awarding damages in favour of Nathanson, the court held that a transgender woman use of the woman's bathroom was not a criminal act. Accordingly, the court ruled that Nathanson had been arrested without a lawful reason. Furthermore, the police were found to have maliciously prosecuted and treated Nathanson inhumanely whilst in detention. In delivering the judgment, the court affirmed transgender people's rights to dignity and to be treated humanely. The judgment also emphasises that law enforcement officials and more broadly, state officials, owe their legal duties towards all people, which includes transgender and gender diverse people.

## **5. Legal Gender Recognition**

The deficiency in legal gender recognition legislation and policy across the continent exposes transgender and gender diverse people to criminalisation, abuse and humiliation.<sup>17</sup> It also limits the freedom of transgender and gender diverse people to participate fully in society. This problem is highlighted when transgender and gender diverse persons are required to explain intimate details of their lives and identity to strangers in order to access routine services or are denied access to education, healthcare, employment, and housing because they lack the 'proper identification'.

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<sup>14</sup> Gender DynamiX (GDX) is a public benefit organisation focused on trans and gender diverse communities.

<sup>15</sup> *Nathanson v Mteliso & Ors.* [2019] ZWBHC 135 (14 November 2019). See also *A.N.N. v The Honourable Attorney General 2012* for another example of a transgender woman successfully challenging discriminatory police practices for violating her privacy and dignity in relation to her detention. However, note that while the judgment provided some relief to the applicant, it is problematic in so far as it fails to recognize the applicant as a transgender woman.

<sup>16</sup> *Ibid.*

<sup>17</sup> As mentioned above, the lack of legal gender recognition laws exposes transgender and gender diverse people to criminalisation under impersonation, misrepresentation, and fraud laws.



**South Africa** and **Namibia** currently have specific provisions in their laws that allow transgender and gender diverse people to change their gender marker or sex descriptor in their official documents. However, these have been critiqued for being inaccessible to many transgender and gender diverse people. In Namibia, stringent bio-medical pre-requisites such as surgical intervention act as a barrier to who can legally change their gender. While in South Africa, the lack of directives on the legal gender change legislation has resulted in inconsistencies in approach to legal gender change applications.<sup>18</sup>

Notably, while most African states do not have explicit provisions in their laws and policies that provide for transgender and gender diverse people to change their gender marker or sex descriptor, this does not mean that the door is closed to effect these changes.<sup>19</sup>

## 6. Judicial victories on legal gender recognition

Activism from transgender and gender diverse individuals and rights organisations across Africa have resulted in an increasing number of cases giving effect to legal gender recognition.

In **Kenya** in 2014, a court allowed a trans woman to remove the gender marker on her Certificate of Secondary Education.<sup>20</sup> The court recognised that it was not necessary to have a gender marker on the applicant's education certificate.

In **Botswana**, ND and Ricki Kgositau, two transgender individuals, both filed separate cases as part of a collective litigation strategy challenging the Registrar of National Registration's refusal to change the two individuals' gender markers on their identity documents.<sup>21</sup> In the landmark judgment handed down in 2017, the High Court affirmed transgender people's right to have the gender that they identify with reflected in their legal documentation. Importantly, in reaching their decision the court held that the refusal to issue a transgender person with the congruent legal documentation contravenes the right to protection from discrimination, to privacy, freedom of expression and to equal treatment before the law.

Finally, in **South Africa** in 2019, Jade September, a trans woman incarcerated in a prison space designated for males, successfully challenged the State's Department of Correctional Services for preventing her from expressing her gender.<sup>22</sup> September, who wants to transition medically, has not yet been able to access the necessary medical care and is still legally recognised as male. In the court's judgment it declared that the prison's operating procedures that prevent transgender inmates from expressing their gender were unconstitutional. Significantly, the judgment provided the option for September to be transferred to a prison space designated for females. The judgment depathologizes transgender and gender diverse identities by recognising that bio-medical requisites to legal gender change constitute an arbitrary barrier to accessing the full protection of the law. This judgment is in line with activism from the continent calling for change that addresses the material conditions of transgender and gender diverse people's lives.

These rulings are noteworthy examples of African judiciaries upholding Resolution 275 of the African Commission by effectively applying appropriate laws in ways that are responsive to the needs of transgender and gender diverse people. Notably, looking towards the future, transgender and gender diverse people across the continent have also raised that legal gender recognition

<sup>18</sup> See also, the South Africa government's inconsistent approach toward marriages where one party applies for legal gender change in *KOS and Others v Minister of Home Affairs and Others* (2298/2017) [2017] ZAWCHC 90. This case emphasises that legal gender recognition requires marriage laws which provide inclusive and equitable approaches for when transgender and gender diverse persons apply for a legal gender change during a marriage.

<sup>19</sup> For example, in states such as Angola and Malawi the domestic legislation is arguably wide enough to be interpreted in a manner that provides for changes to be made to transgender and gender diverse people's sex and gender markers.

<sup>20</sup> *Republic v Kenya National Examinations Council & another Ex-parte Audrey Mbugua Ithibu* [2014] Eklr.

<sup>21</sup> *ND v Attorney General of Botswana and others; Tshupo Kgositau v Attorney General of Botswana and others* [2017].

<sup>22</sup> *September v Subramoney NO and Others* [2019] 4 All SA 927 (WCC) (23 September 2019).

needs to be addressed in relation to several other areas and aspects, such as the legal provision for recognition of transgender parents and for a third sex marker option or an 'X' gender marker.

## 7. Limitations

The African legal landscape in relation to transgender and gender diverse people is strongly characterised by criminalisation. This acts as a barrier to documenting and collating information on transgender and gender diverse people's interactions with the law and law enforcement.<sup>23</sup> The adverse conditions that transgender and gender diverse human rights defenders face also limits the effective monitoring of rights violations and the experiences of transgender people in attempting to access legal gender recognition.

Many transgender and gender diverse people do not report rights abuses due to the hostile experiences they face at the hands of law enforcement officials. Accordingly, it should be noted that where countries have not been reported on, this does not mean that transgender and gender diverse people are not being criminalised through law and practice. Equally, where no legal gender recognition laws have been reported on, this should not be taken to be asserting any position on these states.

## 8. Conclusion

Despite the difficult African criminal law and legal gender recognition context, African transgender and gender diverse activism – which aims to improve the lives of transgender and gender diverse people across the continent – is emerging in dynamic ways. Transgender and gender diverse activists continue to document, and fight discrimination based on gender identity and expression. This is most evident in litigation challenging the criminalisation of transgender people and advocating for legal gender recognition. The developing African jurisprudence on the human rights of transgender and gender diverse people provides regional momentum for progressive regional driven change. Nevertheless, it is well recognized by activists across the continent that litigation is only one aspect of improving the lives of transgender and gender diverse people. Full and effective protection of transgender and gender diverse people requires political will and civil society to come together to ensure not only substantive legal equality, but also to address socio-economic equality and fairness.

*\*The authors would like to thank all the various organisations and individuals across the continent who documented, supplied, and cross-checked the information for this report. These include but are not limited to, Lambda Mozambique, Transbantu Association Zambia, Mouvement pour les Libertés Individuelles (MOLI), Transamical, Eswatini Sexual & Gender Minorities, Trans Swati, Gays and Lesbians of Zimbabwe (GALZ), Iris Angola, Transcend Namibia, Center for the Development of People (CEDEP), Gender DynamiX, The Other Foundation, Trans Network of Liberia (TNOL), Lesbians, Gays and Bisexuals of Botswana (LEGABIBO), The People's Matrix Association, Carter Honorée, Sheriff Mothopeng, Beyonce Karungi, Steeves Winner, Madame Karishma Richards, Madame Jholerina Timbo, Tadios Munimani, Kanyanta Kakana, and Ricki Kgositau.*

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<sup>23</sup> One of the areas of concern in relation to the criminalisation of transgender and gender diverse people that is not covered in this regional report is the issue of discriminatory sentencing of transgender and gender diverse people. This is a possible area for future research.



# Algeria

	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Penal Code (Ordinance 66-156 of 8 June 1966). <sup>24</sup>
	Quote/details	<p>Article 333 (Modifié) [in 1982].<sup>25</sup></p> <p>Any person who has committed a public indecency offence is punished by imprisonment from two (2) months to two (2) years and a fine from five hundred (500) to two thousand (2,000) DA.</p> <p>Where the public indecency consists of an unnatural act with an individual of the same sex, the penalty is imprisonment for six (6) months to three (3) years and a fine of one thousand (1,000) to ten thousand (10,000) dinars</p> <p>Article 338.</p> <p>Any person who commits an act of homosexuality against a person of the same sex shall be punished by imprisonment from two months to two years and a fine of 500 to 2,000 dinars.</p>
		[DE FACTO CRIMINALISATION]
	Situation	There are no laws in Algeria that <i>de jure</i> criminalise transgender and gender diverse people. However, in practice, transgender and gender diverse people have been indirectly criminalised ( <i>de facto</i> criminalisation). <sup>26</sup> The criminalisation of consensual same-sex sex and conduct and public decency provisions have been used to subject transgender and gender diverse people to harassment and arbitrary search, arrest and detention. <sup>27</sup>

<sup>24</sup> <https://wipolex.wipo.int/en/legislation/details/7998>

<sup>25</sup> Translated from the original in French.

<sup>26</sup> Police practices in Algeria sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>27</sup> US Department of State, *Algeria 2018 Human Rights Report*, <https://www.state.gov/wp-content/uploads/2019/01/Algeria.pdf>, pp. 29-30 & UK Home Office, Country Policy and Information Note Algeria: Sexual orientation and gender identity 2015. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646716/algeria\\_sexual\\_orientation\\_gender\\_identity\\_v2\\_0\\_september\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/646716/algeria_sexual_orientation_gender_identity_v2_0_september_2017.pdf) p. 5.








# Angola

	<b>Name change</b>	Nominally possible. As explained below for gender marker change.
	<b>Gender marker change</b>	Nominally possible, with unclear requirements.
	<i>Legislation</i>	<i>Código do Registo Civil 2015, Section 87 (not trans-specific).</i>
	<i>Documents amended</i>	National Identity Card, passport.
	<i>Conditions for gender marker change</i>	Section 78 of the <i>Código do Registo Civil 2015</i> does not allow alterations of details entered in the registration of records by the Civil Registrar. However, s. 87 permits changes, including change of name where there is a change of facts which alter the legal identity or status of the person. A change of sex marker may also be possible under s. 87. <sup>28</sup>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Situation</i>	Angolan law does not criminalise transgender and gender diverse people. There are no reported cases of transgender and gender diverse people being subjected to arbitrary arrest or detention.

<sup>28</sup> Southern Africa Litigation Centre, *Laws and Policies Affecting Transgender Persons in Southern Africa*, 2016, pp. 18-19. <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Transgender-Rights-Booklet.pdf>



# Benin

 <b>Laws used against transgender and gender diverse people</b>	
 <b>Legislation</b>	Penal Code 2018. <sup>29</sup>
 <b>Quote/details</b>	<div style="border: 1px solid #ccc; padding: 5px;"> <p>Article 544.</p> <p>Any person who has committed public indecency shall be punished by imprisonment from three (3) months to two (2) years and a fine from fifty thousand (50,000) to two hundred and fifty thousand (250,000) CFA francs.</p> </div> <p>[DE FACTO CRIMINALISATION]</p>
 <b>Situation</b>	There are no laws in Benin that <i>de jure</i> criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people have been indirectly criminalised ( <i>de facto</i> criminalisation). <sup>30</sup> Public order provisions have been used to subject transgender and gender diverse people to harassment, arbitrary search, arrest, and detention.
 <b>Examples</b>	An article from June 2016 reported that transgender activist, Cléo, had been issued with a police summons for affronting public decency. Fearing for her safety, Cléo fled Benin and successfully claimed refugee status in Tunisia. <sup>31</sup>

<sup>29</sup> <http://10.150.35.18:6510/www.legibenin.net/pdfs/le%20nouveau%20code%20penal%202018.pdf>

<sup>30</sup> Police practices in Benin sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>31</sup> Haïfa Mzalouat, "Cléo, a transgender activist who has sought asylum in Tunisia", *Heinrich-Böll-Stiftung*, 21 June 2016, <https://www.boell.de/en/2016/06/21/cleo-transgender-activist-who-has-sought-asylum-tunisia>.








# Botswana

	<b>Name change</b>	Possible.
	Legislation	<i>Births and Death Registration Act 48 of 1968, Section 13(3)(a).</i>
	Quote/details	<p>Section 13(3)(a).</p> <p><i>...the Registrar must be satisfied that the person has a settled wish and intention to be and to continue to be generally known by the new forename or forenames either in substitution for or in addition to the forename or forenames under which his birth was registered.</i></p>
	<b>Gender marker change</b>	Potentially possible, with prohibitive requirements.
	Legislation	<i>National Registration Act 26 of 1986, s.16 (not trans-specific)</i>
	Quote/details	<p>In 2017, before the High Court of Botswana, in separate cases, a transgender man and a transgender woman successfully challenged the refusal of the Registrar of National Registration to change the gender marker on their identity documents.<sup>32</sup> Both applicants relied on the <i>National Registration Act</i> which provides the framework by which the Registrar can change any particulars of a registered person and to issue that person with a new identity documentation if there has been a material change to their circumstances.</p> <p>These cases have set a precedent for other transgender persons who wish to change the gender marker in their identity documents. Following the court's decisions, at least 10 transgender persons have been able to change their legal gender markers without having to go to court. However, there is currently no specific governmental policy on legal gender recognition.<sup>33</sup></p>
	Conditions for gender marker change	<p>Section 16. Material change.</p> <p>(1) <i>Where the registrar is of the opinion that any change in the particulars relating to a registered person materially affects his registration, he shall record the change and notify the Registrar of National Registration of the circumstances and recommend that the person concerned should be issued with a new identity card. [...]</i></p> <p>(3) <i>The particulars relating to the new identity card and its holder shall be recorded in the national register and the register of the area in which that person is registered.</i></p>
		<p>In <i>ND v Attorney General of Botswana</i>, the High Court ruled that the refusal of the Registrar to change a transgender man's gender marker on his national identity card was unreasonable and violated his rights to dignity, privacy, freedom of expression, equal protection of the law, freedom from discrimination and freedom from inhumane and degrading treatment. The court ordered a change of gender marker from "female" to "male". The applicant submitted various supporting evidence, including psychological and medical evidence in support of his claim.<sup>34</sup> This judgment was then used in the second case of <i>Kgositau v Attorney General and Registrar of National Registration</i> to grant a court order to change the applicant's gender marker from "male" to "female".</p>

<sup>32</sup> *ND v Attorney General of Botswana* 2017 (High Court of Botswana) & *Kgositau v Attorney General and Registrar of National Registration*, 2017 (High Court of Botswana).

<sup>33</sup> Ricki Kgositau-Kanza, *Transgender Policy Brief in Botswana*, 2019.

<sup>34</sup> South Africa Litigation Centre, "Botswana High Court Rules in Landmark Gender Identity Case", 2017. <https://www.southernafricalitigationcentre.org/2017/09/29/press-release-botswana-high-court-rules-in-landmark-gender-identity-case/>

 <b>Laws used against transgender and gender diverse people</b>	
 <b>Legislation</b>	Penal Code 1964 <sup>35</sup> (as amended the Penal Code Amendment Act 14, 2005). <sup>36</sup>
 <b>Quote/details</b>	<p>Sections 176, Common nuisance.</p> <p>Any person who does an act not authorised by law or omits to discharge a legal duty thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercised of common rights, commits the offence termed a common nuisance and is liable to imprisonment for a term not exceeding one year.</p> <p>Section 179, Idle and disorderly persons.</p> <p>Any person who...</p> <p>(b) wanders or places himself in any public place for the purpose of begging or gathering alms, or causes or procures or engages any child to do so;</p> <p>(d) publicly conducts himself in a manner likely to cause a breach of the peace;</p> <p>(e) without lawful excuse does any indecent act;</p> <p>(f) in any public place solicits immoral purposes</p> <p>is guilty of an offence and liable to a fine not exceeding P10 or to imprisonment for a term not exceeding one month.</p> <p>Section 182, Rogues and vagabonds.</p> <p>A person who...</p> <p>(c) is found in or about any premises or in any road or highway or any place adjacent thereto or in any public place, for any unlawful purpose shall be guilty of an offence and shall be liable on a first conviction thereof to imprisonment for a term not exceeding three months.</p> <p>[DE FACTO CRIMINALISATION]</p>
 <b>Situation</b>	<p>There are no laws in Botswana that <i>de jure</i> criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people have been indirectly criminalised (<i>de facto</i> criminalisation).<sup>37</sup> Public order provisions have been used to subject transgender and gender diverse people to harassment, arbitrary search, arrest and detention.<sup>38</sup></p> <p>On 11 June, Botswana's High Court unanimously ruled that its penal laws that criminalise consensual same-sex sex were unconstitutional.<sup>39</sup> Subsequently, the State has indicated that it will appeal this ruling.<sup>40</sup> The provisions that criminalised consensual same-sex sex contributed to the criminalisation of transgender and gender diverse people.<sup>41</sup></p>
 <b>Examples</b>	In February 2017, during tertiary student protests a transgender student was arrested. She reported that while in custody police had mistreated her and made her strip to verify her gender. <sup>42</sup>

<sup>35</sup> <http://www.wipo.int/edocs/lexdocs/laws/en/bw/bw012en.pdf>

<sup>36</sup> <https://www.hrw.org/en/reports/2003/05/13/more-name-0>

<sup>37</sup> Police practices in Botswana sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>38</sup> Southern Africa Litigation Centre, *Laws and Policies Affecting Transgender Persons in Southern Africa*, 2016, pp. 21-22.

<sup>39</sup> LM v The Attorney General, High Court of Botswana, 11 June 2019. <https://www.southernafricalitigationcentre.org/wp-content/uploads/2019/06/Botswana-decrim-judgment.pdf>.

<sup>40</sup> Botswana to appeal ruling decriminalising homosexuality, BBC, 6 July 2019. <https://www.bbc.com/news/world-africa-48892517>.

<sup>41</sup> Southern Africa Litigation Centre, *Laws and Policies Affecting Transgender Persons in Southern Africa*, 2016, pp. 21-22.

<sup>42</sup> United States Department of State, *Botswana 2017 Human Rights Report*. <https://www.state.gov/wp-content/uploads/2019/01/Botswana.pdf>, p. 8.





# Burundi

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.
	Situation	<p><b>Note:</b> According to the Penal Code in force, it is impossible to have a transgender (or gender non-confirming) identity recognized legally/administratively without falling under an offense. For transgender and gender non-confirming people, having an administrative document that reflects their gender identity would be subject to the offense of forgery in certain administrative documents and certificates (page 69 of the Penal Code). Articles 366, 367 and 368 (paragraphs 1 and 2) of the Penal Code are relevant.<sup>43</sup></p>
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Law No. 1/27 of 29 December 2017 concerning the revision of the Penal Code. <sup>44</sup>
	Quote/details	<p>Article 366.</p> <p>Whoever counterfeits, falsifies or alters the licenses, certificates, booklets, cards, newsletters, receipts, passports, mission orders, roadmaps, border passes or other documents issued by public authorities in order to establish a right, identity or quality, or to grant an authorization, shall be punished with imprisonment of six months to three years and a fine of fifty thousand to a hundred thousand Burundian francs.</p> <p>Article 367.</p> <p>The penalties stipulated in the preceding article are applied to:</p> <p>(1) Whoever knowingly makes use of such falsified, forged or altered documents;</p> <p>(2) Whoever makes use of a document described in the previous article, knowing that the information contained therein has become incomplete or inaccurate.</p> <p>Article 368.</p> <p>Whoever is improperly issuing a document designated in Article 366 either by making false statements or by taking a false name or false status or by providing false information or certificates shall be punished with imprisonment of three months to three years and a fine of 50,000 to 100,000 francs, without prejudice to special provisions in this regard.</p> <p>The same penalties are applied to those who made use of such a document, obtained under the above-mentioned conditions, or made under a name other than his own.</p> <p>Article 378.</p> <p>Is punished by imprisonment of two months to two years and a fine of 10,000 to 30,000 Burundian francs or one of these penalties, whoever, being required by the authority to declare his/her identity, claims as his/hers an identity that belongs to another, or is a purely imaginary identity.</p> <p>Article 379.</p> <p>Is punishable by a prison term of six months to three years and a fine of thirty thousand to fifty thousand francs or only one of these penalties, any person who, either by presenting himself/herself as the owner of any documents or objects relating to a specific person, issued or certified by a national or foreign authority or by any other manoeuvre deceived authority over his/her identity.</p> <p>Article 380.</p>

<sup>43</sup> Source: Mouvement pour les libertés individuelles (MOLI), 2019.

<sup>44</sup> <https://www.droit-afrique.com/uploads/Burundi-Code-2017-penal.pdf>



		<p><i>Is punishable by the same penalties as the preceding article, any person who in order to deceive the authorities about his/her identity, presented documents or objects of this kind not related to the person who uses them.</i></p> <p>Article 587.</p> <p><i>Anyone who has exhibited, sold or distributed songs, pamphlets or other written, printed or not, figures, pictures, emblems or other objects contrary to morality, is sentenced to a fine of 50,000 to 100,000 Burundian francs.</i></p> <p><i>Is subject to the same penalties anyone who, for trade or distribution purposes, has detained, imported or caused to be imported, transported or caused to be transported, delivered to a transport or distribution agent, announced by any means of advertising songs, pamphlets, writings, drawings, pictures, emblems or objects contrary to morality.</i></p> <p><i>In the cases provided in the preceding paragraphs, the author of the writing, or the figure of the picture, the person who printed or reproduced them, manufacturers of the emblem or object shall be punished by fine of fifty thousand to a hundred thousand Burundian francs.</i></p> <p><i>Whoever sang, read, recited, heard or uttered obscenities in meetings or public places in front of several people and in the hearing of these people, is punishable by a fine of ten thousand to twenty thousand Burundian francs.</i></p> <p>Article 588.</p> <p><i>Anyone who has publicly insulted morals by actions that offend public decency is punishable by a fine of fifty thousand to one hundred thousand francs.</i></p> <p>Article 590.</p> <p><i>Anyone who engages in sexual relations with a person of the same sex shall be punishable by a prison sentence not less than three months and not exceeding two years and by a fine not less than fifty thousand and not exceeding a hundred thousand Burundian francs or by any of these punishments.</i></p>
	<p><b>Situation</b></p>	<p>[DE FACTO CRIMINALISATION]</p> <p>Burundian law does not directly criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people are indirectly criminalised (<i>de facto</i> criminalisation).<sup>45</sup> The criminalisation of adult consensual same-sex sex and conduct, public morality provisions, and impersonation and forgery laws that are aimed at preventing fraud, theft, embezzlement and other acts of deceit that may cause harm are used to subject transgender and gender diverse people to harassment, extortion, arbitrary search, arrest and detention.<sup>46</sup></p> <p>There have also been cases where transgender and gender diverse people who are facing violence or at risk of facing violence have been arbitrarily arrested and detained by the police on the basis that the police are attempting to protect the safety of the transgender and gender diverse person(s).<sup>47</sup></p>
	<p><b>Examples</b></p>	<p><b>2009</b></p> <p>In June 2009, Alex, a transgender person was arrested in Bujumbura on the grounds of homosexuality by a judicial police officer. Alex was then released on the same day after posting bail of approximately 200 USD to the officer. In custody, Alex had been placed in a jail cell where the other prisoners had verbally and physically assaulted him.<sup>48</sup></p> <p><b>2011</b></p> <p>In April 2011, two individuals in the Kamenge district of Bujumbura with diverse gender expressions were targeted by a police officer. They</p>

<sup>45</sup> Burundian police practices consistently sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>46</sup> Mouvement pour les Libertés Individuelles (MOLI), *I love my country, but my country does not love me. Human Rights: The Situation of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Burundi (2003-2013)*, 2014, & The East African Sexual Health and Rights Initiative, *Turi Abande? (Where do we Belong): A landscape analysis of the human rights of sex workers and LGBT communities in Burundi*, 2016.

<sup>47</sup> MOLI et al., *The status of lesbian, gay, bisexual, and transgender rights in Burundi: A Shadow Report*, 2014.

<sup>48</sup> MOLI, *I love my country, but my country does not love me. Human Rights*, p. 12.

reported that the officer harassed them and threatened to arrest them unless they paid him money.<sup>49</sup>

In August 2011, a transgender woman in Bujubura went to report the theft of her wallet. At the police station she was accused of having a stolen driving licence. She was detained and abused by the police who assaulted her and cut her hair. When a friend came to help her, police told him they were sure the transgender woman “is homosexual because of his haircut”. Police detained the transgender woman for three days, during this time she did not receive any medical care for her injuries.<sup>50</sup>

### 2012

In May 2012, a transgender woman was the victim of verbal and physical attacks by a crowd in Bujumbura’s central market. She was then detained at the police station under the alleged reason of protecting her safety.<sup>51</sup>

### 2013

In a 2013 article, it was reported that a transgender woman in Bujumbura working in a hair salon was in a relationship with her employer’s husband. When her employer found this out, she reported the transgender woman to the police. A squad of police officers then found the transgender woman and threatened to kill her.<sup>52</sup>

### 2016

In a 2016 report by UHAI, the East African Sexual Health & Rights Initiative, it was recounted by Lola, a transgender sex worker in Bujumbura, that when arrested and detained, transgender sex workers are abused and often have to pay money to be released.<sup>53</sup>

Additionally, the report notes that failure to produce “identity documents or the production of documents that may not reflect somebody’s identity and gender expression may lead to arrest and detention in a police station.”<sup>54</sup>

Maya, a transgender woman from Bujumbura recounted being stopped by police officers while driving and requested to show her identification. She was then made to get out of her car and arrested. Police interrogated her on her gender, and she was asked if her identification really belonged to her. A police officer also attempted to touch her genitals to verify her gender. Maya was released after being held for two hours after someone she knew intervened and urged the police to forgive Maya and let her go.<sup>55</sup>

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> MOLI et al., *The status of lesbian, gay, bisexual, and transgender rights in Burundi*, p. 18.

<sup>52</sup> Katy Migiro, “Everyone who has found out that I am gay has tried to kill me”, Thomson Reuters Foundation, 17 May 2013, <http://news.trust.org/item/20130517091819-k7m9x/>. Note: the article misgenders the transgender woman.

<sup>53</sup> East African Sexual Health and Rights Initiative, *Turi Abande? (Where do we Belong): A landscape analysis of the human rights of sex workers and LGBT communities in Burundi*, 2016, p. 43.

<sup>54</sup> Ibid., p. 27.

<sup>55</sup> Ibid.



# Cameroon

	<b>Name change</b>	Not possible. <sup>56</sup>
	<b>Gender marker change</b>	Not possible.
	<b>Laws used against transgender and gender diverse people</b>	
	<b>Legislation</b>	Penal Code of Cameroon (Law No. 2016/007 of 12 July 2016). <sup>57</sup>
	<b>Quote/details</b>	<p>Section 294, Immoral Earnings.</p> <p>(1) Whoever procures, aids or facilitates another persons' prostitution, or shares in the proceeds of another's prostitution, whether habitual or otherwise, or who is subsidised by any person engaging in prostitution shall be punished with imprisonment for 6 months to 5 years and with fine from CFAF 20,000 TO CFAF 1,000,000.</p> <p>(2) Whoever lives with a person engaging in prostitution shall be presumed to be subsidised by her, unless he shows that his own resources are sufficient to enable him to support himself.</p> <p>Section 343, Immoral Earnings.</p> <p>(1) Whoever, of either sex, engages habitually for gain, in sexual intercourse with another shall be punished with imprisonment for from 6 months to 5 years and with fine of from CFAF 20,000 to CFAF 500,000.</p> <p>(2) Whoever, in view of prostitution of or debauchment, proceeds with public gestures, words and writing or by any other means to the soliciting of persons of either sex shall be punished in like manner.</p> <p>Section 347-1, Homosexuality.</p> <p>Whoever has sexual relations with a person of the same sex shall be punished with imprisonment from 6 months to 5 years and fine of from CFAF 20,000 to CFAF 200,000.</p> <p>[DE FACTO CRIMINALISATION]</p>
	<b>Situation</b>	Cameroonian law does not directly criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people are indirectly criminalised ( <i>de facto</i> criminalisation). <sup>58</sup> The criminalisation of adult consensual same-sex sex and sex work are used to subject transgender and gender diverse people to extortion, <sup>59</sup> harassment, <sup>60</sup> and arbitrary search, arrest and detention. <sup>61</sup>
	<b>Examples</b>	<p><b>2011</b></p> <p>In 2011, Naomi and Delores, two well-known transgender women from Yaoundé who have repeatedly been victims of public attacks and assaults, were both convicted for homosexuality and sentenced to the maximum penalty, five years in prison and 200,000 francs. In Delores' case, the judge concluded that she was homosexual because she drinks</p>

<sup>56</sup> Name change does not appear to be possible on the grounds of being transgender. Source: Steeves Winner, researcher.

<sup>57</sup> <https://www.wipo.int/edocs/lexdocs/laws/en/cm/cm014en.pdf>

<sup>58</sup> Cameroonian police and gendarmes' practices consistently sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>59</sup> LGBTI rights organizations such as the Cameroonian Foundation for AIDS (CAMFAIDS), Humanity First Cameroon, Alternatives Cameroon, National Observatory of the Rights of LGBTI Persons and Their Defenders, and others reported several arrests of LGBTI persons, 2017. <https://www.state.gov/wp-content/uploads/2019/03/Cameroon-2018.pdf>; Alternatives-Cameroun, The Violations of the Rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) Individuals in Cameroon, 2017, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CMR/INT\\_CCPR\\_CSS\\_CMR\\_29079\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CMR/INT_CCPR_CSS_CMR_29079_E.pdf).

<sup>60</sup> Erin Royal Brokovitch, "LGBTI activists challenge Cameroon police harassment", Erasing 76 Crimes, 14 April 2016. <https://76crimes.com/2016/04/14/lgbti-activists-challenge-cameroon-police-harassment/>.

<sup>61</sup> Finnish Immigration Service, Status of LGBTI People in Cameroon, Gambia, Ghana and Uganda, 2015, p. 38. [https://migri.fi/documents/5202425/5914056/64429\\_Status\\_of\\_LGBTI\\_people\\_in\\_Cameroon\\_Gambia\\_Ghana\\_and\\_Uganda\\_3.12.2015.pdf/678747c6-1b6f-477a-be13-984a62908e47](https://migri.fi/documents/5202425/5914056/64429_Status_of_LGBTI_people_in_Cameroon_Gambia_Ghana_and_Uganda_3.12.2015.pdf/678747c6-1b6f-477a-be13-984a62908e47).

Bailey's liqueur, which he described as a woman's drink.<sup>62</sup> Both verdicts were annulled in January 2013.<sup>63</sup>

#### 2014

In 2014, a police officer seeking sex with a sex worker approached Noline, a transgender sex worker. On finding out she was transgender, he assaulted, arrested and charged her with homosexuality.<sup>64</sup>

Seven transgender people (including Naomi and Delores), were arrested and charged with homosexual relations and prostitution.<sup>65</sup> Neighbours had reported them to the police because they suspected them of homosexuality.<sup>66</sup>

After being detained for several days they were then released due to insufficient evidence. The transgender individuals were warned that they would be under close observation and re-arrested and put on trial if they engaged in "any deviant behaviour".<sup>67</sup>

#### 2017

In 2017, two individuals in the Mendong neighborhood in Yaoundé were arrested by the local unit of the military because they appeared to be transgender.<sup>68</sup>

A 16-year old transgender girl was arrested and detained for being transgender.<sup>69</sup>

#### 2018

In July 2018, a group of men attacked a transgender woman, Dolores, in Yaoundé. After all being arrested, the group of men were released but Dolores was detained at the police station and denied medical treatment. Police cut her hair and demanded she stop dressing as a woman. Dolores was released after a friend posted bail.<sup>70</sup>

<sup>62</sup> Erin Royal Brokovitch, "Life is tough for trans and intersex Cameroonians", Erasing 76 Crimes, 17 December 2014. <https://76crimes.com/2014/12/17/life-is-tough-for-trans-and-intersex-cameroonians/>.

<sup>63</sup> Erin Royal Brokovitch, "Quick response to new anti-gay persecution in Cameroon", Erasing 76 Crimes, 6 October 2014. <http://76crimes.com/2014/10/06/quick-response-to-new-anti-gay-persecution-in-cameroon/>.

<sup>64</sup> "Cameroon sex worker jailed for not being a girl", Erasing 76 Crimes, 3 February 2014, <https://76crimes.com/2014/02/03/cameroon-sex-worker-jailed-for-not-being-a-girl/>.

<sup>65</sup> Erin Royal Brokovitch, "Quick response to new anti-gay persecution in Cameroon", Erasing 76 Crimes, 6 October 2014. <http://76crimes.com/2014/10/06/quick-response-to-new-anti-gay-persecution-in-cameroon/>.

<sup>66</sup> "Anti-gay Cameroon resumes arrests; 7 nabbed in raid", Erasing 76 Crimes, 2 October 2014, <https://76crimes.com/2014/10/02/anti-gay-cameroon-resumes-arrests-7-nabbed-in-raid/>; Aaron Day, "Cameroon: Authorities release 7 trans people arrested in anti-gay house raid", Pink News, 10 October 2014. <https://www.pinknews.co.uk/2014/10/10/cameroon-authorities-release-7-trans-people-arrested-in-anti-gay-house-raid/>.

<sup>67</sup> Ludovica Laccino, "Cameroon Frees Seven Transgender People Arrested for Violating Anti-Gay Law", International Business Times, 10 October 2014. <http://www.ibtimes.co.uk/cameroon-frees-seven-transgender-people-arrested-violating-anti-gay-law-1469435>.

<sup>68</sup> The Advocates for Human Rights et al., *Cameroon: Joint Stakeholder Report for the United Nations Universal Periodic Review*, 2017. [https://www.theadvocatesforhumanrights.org/uploads/upr\\_cameroon\\_tahr\\_camfaids\\_observatory\\_english.pdf](https://www.theadvocatesforhumanrights.org/uploads/upr_cameroon_tahr_camfaids_observatory_english.pdf).

<sup>69</sup> Erin Royal Brokovitch, "2 weeks (so far) in Cameroon prison for being trans" Erasing 76 Crimes, 31 March 2017. <https://76crimes.com/2017/03/31/2-weeks-so-far-in-cameroon-prison-for-being-trans/>.

<sup>70</sup> "Popular trans woman beaten and arrested in Cameroon" Erasing 76 Crimes, 27 July 2018. <https://76crimes.com/2018/07/27/popular-trans-woman-beaten-and-arrested-in-cameroon/>.



## Democratic Republic of the Congo

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.
	<i>Situation</i>	<p><i>Note: The Democratic Republic of the Congo does not allow trans people to change their legal name and gender markers on official documents. Trans people must use documents that do not reflect their identity and do not fit their gender expression, and therefore are exposed to greater discrimination.<sup>71</sup></i></p>

<sup>71</sup> Source: Mouvement pour la promotion du respect et égalité des droits et santé (MOPREDS) et al., 2017.



# Egypt



## Laws used against transgender and gender diverse people



### Legislation

Penal Code<sup>72</sup> (Promulgated by Law No. 58/1937, as amended by Law No. 95-2003).<sup>73</sup>



### Quote/details

#### Article 278.

Whoever commits in public a scandalous act against shame shall be punished with detention for a period not exceeding one year or a fine not exceeding three hundred pounds.

#### Article 269 bis.

Whoever is found on a public road or a traveled and frequented place inciting the passersby with signals or words to commit indecency shall be punished with imprisonment for a period not exceeding one month. If the felon recurs to committing this crime within one year of the first crime, the penalty shall become imprisonment for a period not exceeding six months and a fine not exceeding fifty pounds. A ruling of conviction shall necessitate placing the convict under police supervision for a period equal to that of the penalty.

#### Article 86 bis.

Imprisonment shall be the inflicted penalty on whoever establishes, founds, organises, or runs contrary to the provisions of the law, an association, corporate, organization, group, or band, the purpose of which is to call by any method, for interrupting the provisions of the constitution or laws, or preventing any of the State's institutions or public authorities from exercising its functions, or encroaching on the personal freedoms of citizens or other freedoms and public rights as guaranteed by the constitution or the law, or impairing the national unity or social peace...

The penalty prescribed in the previous clause shall be inflicted on whoever propagates by speaking or writing or by any other method, for the purposes mentioned in the first clause, and also whoever, personally or by an intermediary, holds or acquires written documents, printed matter, or records, whatever their kind, comprising propagation or advocacy of any of the foregoing, if they are prepared for distribution or access by third parties, and also whoever holds or acquires any method of printing, recording, or publicising which is used or prepared for use, even temporarily for printing, recording or diffusing anything of the foregoing.

[DE FACTO CRIMINALISATION]



### Legislation

Law No. 10/1961<sup>74</sup> on the Combating of Prostitution.



### Quote/details

#### Article 9, Practicing or incitement to debauchery.

Punishment by imprisonment for a period not less than three months and not exceeding three years and a fine not less than 25 LE and not exceeding 300 LE [...] or one of these two punishments applies in the following cases:

(a) Whoever lets or offers in whatever fashion a residence or place run for the purpose of debauchery or prostitution, or for the purpose of housing one or more persons, if they are to his knowledge practicing debauchery or prostitution.

(b) Whoever owns or manages a furnished residence or furnished rooms or premises open to the public and who facilitates the practice of debauchery or prostitution, either by admitting persons so engaged or by allowing on his premises incitement to debauchery or prostitution.





(c) Whoever habitually engages in debauchery or prostitution.

Upon the apprehension of a person in the last category, it is permitted to send him for a medical examination. If it is discovered that he is carrying an

<sup>72</sup> <http://hrlibrary.umn.edu/research/Egypt/criminal-code.pdf>

<sup>73</sup> <http://www.mohamoon-montada.com/Default.aspx?action=ArabicLaw&ID=20>

<sup>74</sup> <http://www.refworld.org/docid/5492d8784.html>

		<p><i>infectious venereal disease, it is permitted to detain him in a therapeutic institute until his cure is completed.</i></p> <p><i>It is permitted to determine that the convicted person be placed, upon completion of his sentence, in a special reformatory until the administrative agency orders his release. This judgment is obligatory in cases of recidivism, and the period spent in the reformatory is not allowed to be more than three years. [...]</i></p>
		[DE FACTO CRIMINALISATION]
	<b>Legislation</b>	Law 175/2018 on Cyber Crimes.
	<b>Quote/details</b>	<p>Article 25.</p> <p><i>Anyone who publishes online content that threatens society's and family's values shall be punished for at least six months of prison and a fine of at least fifty thousand pounds.</i></p>
		[DE FACTO CRIMINALISATION]
	<b>Situation</b>	There are no laws in Egypt that <i>de jure</i> criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people have been indirectly criminalised ( <i>de facto</i> criminalisation). <sup>75</sup> The criminalisation of activities associated to sex-work, debauchery, public indecency, and public order provisions, among others, have been used liberally to subject transgender and gender diverse people to harassment and arbitrary search, arrest, and detention. <sup>76</sup>
	<b>Examples</b>	<p>A 2017 Amnesty report found that in the period from October 2013 to March 2017, at least 232 individuals were arrested in Egypt based on their actual or perceived sexual orientation and gender identity.<sup>77</sup> The individuals were predominantly charged with 'practicing debauchery'.<sup>78</sup> As part of this strategic crackdown, the Egyptian 'Morality Police' used illegal means such as entrapment through fake accounts on LGBTQ+ dating websites and applications in order to arbitrarily arrest and detain transgender people.<sup>79</sup></p> <p>In March 2019, Malak al-Kashif, a transgender woman was abducted by National Security Agency officers from her family's residence in Giza. Malak's arrest was in relation to her online posts calling for protests.<sup>80</sup> Malak is facing charges of "aiding a terrorist organisation" under Article 12 of the Anti-Terrorism Act of 2015 and for "misusing social media to commit a crime punishable by law" under Article 27 of the Electronic Crimes Prevention Act of 2018. Malak was provisionally released from pre-trial detention in July after being detained for over four months.<sup>81</sup> During this time Malak was kept in solitary confinement in a prison designated for males. Malak was also subjected to a forced anal examination at a government hospital and to other forms of sexual assault.</p>

<sup>75</sup> Police practices in Egypt sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>76</sup> Egyptian Initiative for Personal Rights, *The Trap: Punishing Sexual Difference in Egypt*, 2017. [https://eipr.org/sites/default/files/reports/pdf/the\\_trap-en.pdf](https://eipr.org/sites/default/files/reports/pdf/the_trap-en.pdf).

<sup>77</sup> *Ibid.*, p. 6.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*, p. 7.

<sup>80</sup> Amnesty International, "Transgender Woman Held in All-Male Prison", 9 April 2019. <https://www.amnesty.org/download/Documents/MDE1201682019ENGLISH.pdf>.

<sup>81</sup> International Federation for Human Rights, "Egypt: Provisional release of Malak al-Kashif", 17 July 2019. <https://www.fidh.org/en/issues/human-rights-defenders/egypt-provisional-release-of-malak-al-kashif>.



# Eswatini

	<b>Name change</b>	Possible.
	Legislation	<i>Births, Marriages and Deaths Registration Act 5 of 1983, s. 8(1).</i>
	<b>Gender marker change</b>	Nominally possible, with unclear requirements.
	Legislation	<i>Births, Marriages and Deaths Registration Act 5 of 1983, section 8 (not trans-specific).</i>
	Documents amended	Birth certificate.
	Conditions for gender marker change	<p>Section 8(3) provides that for persons over 21 years of age and if, after registration of birth, there is a change in “any other particular of a person” not provided for in that section, the person may apply for alteration of the birth register.</p> <p>The sub-section also provides that:</p> <div data-bbox="608 853 1270 969" style="border: 1px solid #ccc; padding: 5px; margin: 10px 0;"> <p><i>“...on production of documentary proof (in case of change of sex of the child a medical certificate from the medical practitioner shall be produced) and... the said particular of the person to be altered in the original birth information form filed in his office, but without erasing the original entry.”</i></p> </div> <p>It appears that gender marker change may be more explicitly (and easily) obtainable for children, rather than adults in Eswatini.<sup>82</sup> The government’s interpretation and implementation of these provisions in relation to transgender adults is unclear.</p>

<sup>82</sup> South Africa Litigation Centre, *Laws and Policies Affecting Transgender Persons in Southern Africa*, 2016, p. 44.





# Gambia



## Laws used against transgender and gender diverse people



### Legislation

*Criminal Code 1965<sup>83</sup> (as amended in 2005<sup>84</sup> and 2014<sup>85</sup>)*



### Quote/details

Article 144, Unnatural offences.

(1) Any person who:

(a) has carnal knowledge of any person against the order of nature; or

(b) [...];

(c) permits any person to have carnal knowledge of him or her against the order of nature;

is guilty of a felony and is liable to imprisonment for a term of 14 years.

(2) In this section "carnal knowledge of any person against the order of nature" includes:

(a) carnal knowledge of the person through the anus or the mouth of the person;

(b) inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and

(c) committing any other homosexual act with the person.

Article 145, Attempts to commit unnatural offences.

Any person who attempts to commit any of the offences specified in the last preceding section is guilty of a felony and is liable to imprisonment for seven years.

Article 147 (as amended by the Criminal Code (Amendment) Act, 2005), Indecent Practices.

(1) Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.

(2) Any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, is guilty of a felony and liable to imprisonment for a term of five years.

(3) In this section "act of gross indecency" includes any homosexual act.

Article 144A, Aggravated homosexuality.

(1) A person commits the offence of aggravated homosexuality where the:

(b) offender is a person living with HIV; [...]

(f) offender is a serial offender; [...]

(2) A person who commits the offence of aggravated homosexuality is liable on conviction to imprisonment for life.

Section 166, Idle and disorderly persons

The following persons –



[...]

(3) every person who in any public place conducts himself in a manner likely to cause a breach of the peace;

<sup>83</sup> [https://www.ilo.org/dyn/natlex/docs/SERIAL/75289/107490/F973061365/GMB75289%20pp%201284\\_1316.pdf](https://www.ilo.org/dyn/natlex/docs/SERIAL/75289/107490/F973061365/GMB75289%20pp%201284_1316.pdf)

<sup>84</sup> <https://www.ilo.org/dyn/natlex/docs/SERIAL/75299/78264/F1686462058/GMB75299.pdf>

<sup>85</sup> <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101060/121595/F-454549913/GMB101060.pdf>

		<p>(4) every person who publicly without lawful excuse does any indecent act; [...] shall be deemed idle and disorderly persons, and shall be liable to imprisonment for one month or to a fine not exceeding two pounds or to both.</p> <p>[DE FACTO CRIMINALISATION]</p> <p>Section 167, Rogues and vagabond (as amended by the Criminal Code (Amendment) Act, 2013)</p> <p>Provides that "Any male person who dresses or is attired in the fashion of a woman in a public place or who practices sodomy as a means of livelihood or as a profession shall be punished with imprisonment for a term which may extend to five years or with a fine of D20, 000 or with both."<sup>86</sup></p> <p>[DE JURE CRIMINALISATION]</p>
	<p><b>Situation</b></p>	<p>The Gambian Penal Code criminalises diverse gender expression through making the transgression of gender norms associated to the sex that a person is assigned at birth a criminal offence.</p> <p>Transgender and gender diverse people are also criminalised under other legal provisions (<i>de facto</i> criminalisation).<sup>87</sup> In particular, the criminalisation of adult consensual same-sex sex and conduct, has been used to subject transgender and gender diverse people to diverse people to harassment, arbitrary search, arrest, and detention.<sup>88</sup></p>
	<p><b>Examples</b></p>	<p>In April 2012, a group of 20 people were arrested and charged with attempting to commit "unnatural acts" and "conspiracy to commit felony."<sup>89</sup> While there are conflicting reports on the reason the group congregated,<sup>90</sup> police testimony during court proceedings indicates that some of the defendants were dressed in women's clothing that was perceived to be inappropriate according to their perceived sex and gender. Additionally, police referred to the nature of the defendants' clothing as evidence of "unnatural acts."<sup>91</sup> The group were reportedly jailed for over a month before being released on bail.<sup>92</sup> The charges against the group were subsequently withdrawn due to insufficient evidence.</p>

<sup>86</sup> See Human Rights Watch, *State of Fear; Arbitrary Arrests, Torture, and Killing*, 2015, p. 56. [https://www.hrw.org/sites/default/files/report\\_pdf/gambia0915\\_4up\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/gambia0915_4up_0.pdf)

<sup>87</sup> Gambian police practices consistently sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>88</sup> Human Rights Watch, *State of Fear*; Finnish Immigration Service, *Status of LGBTI People in Cameroon, Gambia, Ghana and Uganda*, 2015. [https://migri.fi/documents/5202425/5914056/64429\\_Status\\_of\\_LGBTI\\_people\\_in\\_Cameroon\\_Gambia\\_Ghana\\_and\\_Uganda\\_3.12.2015.pdf/678747c6-1b6f-477a-be13-984a62908e47](https://migri.fi/documents/5202425/5914056/64429_Status_of_LGBTI_people_in_Cameroon_Gambia_Ghana_and_Uganda_3.12.2015.pdf/678747c6-1b6f-477a-be13-984a62908e47).

<sup>89</sup> Amnesty International, *Gambia Detonating Human Rights Situation: Amnesty International Submission to the UN Universal Periodic Review*, 2014, p.7., <https://www.amnesty.org/download/Documents/4000/afr270062014en.pdf>.

<sup>90</sup> Human Dignity Trust, *Injustice Exposed: The Criminalisation of Transgender People and its Impact*, 2019, p. 22. <https://www.humandignitytrust.org/wp-content/uploads/resources/Injustice-Exposed-the-criminalisation-of-trans-people.pdf>.

<sup>91</sup> Colin Stewart, "Dancing in Gambia: 18 gays, 2 lesbians face felony charges", *Erasing 76 Crimes*, 20 April 2012. <https://76crimes.com/2012/04/20/dancing-in-gambia-18-gays-2-lesbians-face-felony-charges/>.

<sup>92</sup> Colin Stewart, "40 days in jail without trial for 20 in 'homosexual dance'", *Erasing 76 Crimes*, 16 May 2012. <https://76crimes.com/2012/05/16/40-days-in-jail-without-trial-for-20-in-homosexual-dance/>.



# Kenya

	<b>Name change</b>	Possible. By deed poll.
	<i>Legislation</i>	<i>Registration of Documents (Change of Name) Regulations, 1967.</i>
	<i>Quote/details</i>	<p>By using Form 1 in the Schedule of the Regulations (a deed poll), a person may change their name in Kenya. Once all legal requirements have been concluded, the applicant registers the deed poll at the Principal Registry in Nairobi or the Coast Registry.</p> <p>The Registrar shall, after registration, cause the deed poll to be advertised in the Kenya Gazette. This acts as a notification to the general public of the change of name. A fee of Sh 500 is payable for the deed poll presented for registration.<sup>93</sup></p> <p>Although theoretically all identity documents can be changed, in practice transgender people have faced challenges when seeking to change their name.</p> <p>In 2017, the High Court of Kenya ordered the Principal Registrar of Persons to grant 5 transgender people's applications to change their names in their identity documents. The 5 individuals brought the case after the office of the Principal Registrar of Persons repeatedly failed to effect the necessary changes.<sup>94</sup></p>
	<b>Gender marker change</b>	Possible, with unclear requirements.
	<i>Legislation</i>	<i>Court application.</i>
	<i>Documents amended</i>	Kenya Certificate of Secondary Education (KCSE), possibly National Identity Card, birth certificate and passport.
	<i>Conditions for gender marker change</i>	<p>In the 2014 case of <i>Republic v Kenya National Examinations Council &amp; another Ex-Parte Audrey Mbugua Ithibu</i> [2014] eKLR, a trans woman successfully applied to the High Court of Kenya to change her name and remove her male gender marker from her secondary school certificate.</p> <p>In coming to its decision, the court referred to evidence it received of the applicant's "Gender Identity Disorder" and the medical treatment she was receiving for it, the Indian case of <i>NALSA v Union of India</i> (2014), including its discussion of human dignity and how it intertwines with the development of a nation, and finally a Kenyan individual's Constitutional and inherent right to human dignity.</p> <p>In terms of the certificate itself, the court observed that there was no law that required the certificates to bear gender markers, examinations in Kenya were not administered and marks were not awarded based on gender, and removing the marker did not dilute the quality of the certificate.</p> <p>Accordingly, in cases where the law does require a gender marker in a document, the process to amend the gender marker is unclear.</p>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Legislation</i>	<i>Penal Code 1948 (as amended by Act No.5 of 2003).</i> <sup>95</sup>
	<i>Quote/details</i>	<div style="border: 1px solid #ccc; padding: 5px;"> <p><i>Section 153, Male person living o earnings of prostitution or soliciting.</i></p> </div>

<sup>93</sup> [https://www.the-star.co.ke/news/2013/01/02/changing-of-names\\_c721212](https://www.the-star.co.ke/news/2013/01/02/changing-of-names_c721212).

<sup>94</sup> Luke Anami, "State ordered to pay transgender women SH30 million over names." <https://www.sde.co.ke/article/2001260360/state-ordered-to-pay-transgender-women-sh30-million-over-names>

<sup>95</sup> <http://www.kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf>

(a) knowingly lives wholly or in part on the earnings of prostitution; or  
 (b) in any public place persistently solicits or importunes for immoral purposes, is guilty of a felony.

(2) Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall unless he satisfies the court to the contrary be deemed to be knowingly living on the earnings of prostitution.

Section 154, Woman living on earnings of prostitution or aiding, etc., prostitution.

Every woman who knowingly lives wholly or in part on the earnings of prostitution, or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, is guilty of a felony.

Section 162, Unnatural offences.

Any person who:

(a) has carnal knowledge of any person against the order of nature; or  
 [...]

(c) permits a male person to have carnal knowledge of him or her against the order of nature,  
 is guilty of a felony is liable to imprisonment for fourteen years.

Section 163, Attempt to commit unnatural offences

Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years.

Section 165, Indecent practices between males.

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.

Section 182, Idle and disorderly persons.

The following persons –

(a) every common prostitute behaving in a disorderly or indecent manner in any public place;  
 [...]

(d) every person who publicly conducts himself in a manner likely to cause a breach of the peace;

(e) every person who without lawful excuse publicly does any indecent act;  
 (f) every person who in any public place solicits for immoral purposes;

shall be deemed idle and disorderly persons, and are guilty of a misdemeanour and are liable for the first offence to imprisonment for one month or to a fine not exceeding one hundred shillings, or to both and for every subsequent offence to imprisonment for one year.

Section 382, Personation in general.

Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour.


#### [DE FACTO CRIMINALISATION]



#### Situation

Kenyan law does not directly criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people are indirectly criminalised (*de facto* criminalisation).<sup>96</sup> The criminalisation of

<sup>96</sup> Kenyan police practices consistently sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

		<p>adult consensual same-sex sex and conduct, sex-work,<sup>97</sup> impersonation,<sup>98</sup> and public order laws are used to subject transgender and gender diverse people to harassment<sup>99</sup> and arbitrary, search, arrest and detention, although charges are often not laid.</p>
	<p><b>Examples</b></p>	<p>There have been multiple reported cases where transgender people have been arrested and charged with impersonation. In 2019 Shieys Chepkosgei was arrested and charged with impersonating a female.<sup>100</sup> In 2012 and 2015, Brenda was arrested and charged for impersonating a female and theft.<sup>101</sup> Commenting on Brenda's case, the Bondo Deputy County Commissioner, Samson Akatch, is report as having said that "cases of transgender women being arrested for impersonation and theft are very common in the area [Bondo]."<sup>102</sup> In 2010, Storm reported being arrested for impersonating a female.<sup>103</sup></p> <p>Public order laws were used to arrest Karla in 2009. The police arrested Karla for being "a public nuisance because he is a man who wears women's clothes."<sup>104</sup></p> <p>In a 2012 article it was reported that a transgender woman was arrested along one of the streets in Nairobi and charged with "importuning for immoral purposes."<sup>105</sup></p>

<sup>97</sup> Most arrests in relation to sex work are based on municipal by-laws across the country that criminalise sex work.

<sup>98</sup> East Africa Trans & Advocacy Network et al, *The Human Rights Situation, Case Law, and Research on Protections on Grounds of Sexual Orientation, Gender Identity, and Expression in the Republic of Kenya*, 2017, <https://www.khrc.or.ke/publications/178-the-human-rights-situation-case-law-and-research-on-protections-on-grounds-of-sexual-orientation-gender-identity-and-expression-in-the-republic-of-kenya/file.html>

<sup>99</sup> *A.N.N v Attorney General [2013] eKLR* In the High Court of Kenya at Nairobi, [https://transgender.or.ke/wp-content/uploads/2017/09/Petition\\_240\\_of\\_2012.pdf](https://transgender.or.ke/wp-content/uploads/2017/09/Petition_240_of_2012.pdf)

<sup>100</sup> Titus Ominde, "Kenyan 'international female athlete' now claims to be transgender", Nairobi News, 27 June 2019, <https://nairobi.news.nation.co.ke/news/kenyan-international-female-athlete-now-claims-to-be-transgender>

<sup>101</sup> Kelli Busey, "Kenyan Teen arrested for being Trans is Facing New Charges", Plant Transgender, 18 February 2013, <https://planettransgender.com/kenyan-teen-arrested-for-being-trans-is-facing-new-charges/>

<sup>102</sup> George Barasa, "Kenya: Transgender Woman Arrested on Impersonation in Usenge, Siaya, Kenya", Kuchu Times, 13 March 2015 <https://www.kuchutimes.com/2015/03/kenya-transgender-woman-arrested-on-impersonation-in-usenge-siayakenya/>

<sup>103</sup> Audrey Mbugua, "The politics of penises: Myths about transgender people", Pambazuka News, 28 July 2010, <https://www.pambazuka.org/gender-minorities/politics-penises-myths-about-transgender-people>

<sup>104</sup> Audrey Mbugua, "Human Rights Violations on Kenya's Transgender Community", 2009, [https://blacklooks.org/articles/articles\\_transgender\\_in\\_kenya/](https://blacklooks.org/articles/articles_transgender_in_kenya/)

<sup>105</sup> Brenda Okoth, "Gender Identity: The Other Sex, Part 3", The Star, 29 November 2012, <http://edition.cnn.com/WORLD/africa/africanawards/pdf/2013/brenda-okoth/brenda-okoth-gender-identity-the-other-sex-part3.pdf>



# Lesotho

	<b>Name change</b>	Possible.
	Legislation	Registration of Births and Deaths Act, s.7(2).
	<b>Gender marker change</b>	Not possible.
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Penal Code Act 2010. <sup>106</sup>
	Quote/details	<p>Section 55, Prostitution.</p> <p>(1) In this section, "prostitute" means a person who engages in sexual activity for payment.</p> <p>(2) A person who incites, instigates or engages or procures another to engage, either in Lesotho or elsewhere, in prostitution, commits an offence.</p> <p>(3) A person who persistently importunes others in a public place with the intention of engaging in sexual intercourse or with the intention of facilitating their sexual intercourse with another person commits an offence.</p> <p>(4) A person who lives or habitually associates with a prostitute or is proved to have exercised control, direction or influence over the movement of the prostitute, in such a manner as to show aiding or compelling prostitution for commercial gain, commits an offence.</p> <p>Section 56, Public indecency.</p> <p>(1) A person who creates or takes part in any indecent spectacle or performance, or who does in public or in private any indecent act which is calculated to offend any reasonable member of the public, commits an offence.</p> <p>Section 66, Fraud.</p> <p>(1) A person who deliberately makes to another person a false representation, or conceals from another a fact which in the circumstances he or she has a duty to reveal, with the intention that such a person should act upon the representation to his or her detriment, and thereby causes him or her so to act, commits the offence of fraud.</p> <p>(2) Where the representer fails to cause the representee to act upon the misrepresentation, the offence of attempted fraud is committed.</p>
	Situation	<p>[DE FACTO CRIMINALISATION]</p> <p>There are no laws in Lesotho that <i>de jure</i> criminalise transgender and gender diverse people. However, as gender marker changes on identity documents are not possible, transgender and gender diverse people have been subjected to harassment and are at risk of being charged with the offence of fraud for not having identity documents that reflect their gender expression.<sup>107</sup> Public indecency provisions have been used to subject transgender and gender diverse people to harassment.<sup>108</sup> Additionally, under the criminalisation of sex work, transgender and gender diverse people who are sex workers and sex workers more broadly are often searched, arrested, detained and subsequently released without charge. Some transgender and gender diverse sex workers have been threatened with arrest by police officers who demand their services without pay.</p>

<sup>106</sup> <https://lesotholii.org/ls/legislation/num-act/6>

<sup>107</sup> Southern Africa Litigation Centre, *Laws and Policies Affecting Transgender Persons in Southern Africa*, 2016, p. 23.

<sup>108</sup> *Ibid.*, p. 24.



### Examples

Sheriff Mothopeng, a transgender rights activist from Lesotho, noted that one of the main challenges transgender and gender diverse people in Lesotho face is “the inability to obtain official documents - passports, ID, driver’s licence etc. - with the correct gender identity. This creates unsafe situations and increases the vulnerability of being interrogated, harassed and searched by law enforcement officers, be it the police or immigration officers.”<sup>109</sup>

<sup>109</sup> Southern Africa Litigation Centre, *Regional Advocacy Meeting on Developing Strategies to Challenge Police Abuse of Marginalised Persons*, 2012, p. 13. [http://www.khushconsulting.com/wp-content/uploads/2012/04/SALC\\_Final-Report\\_Oct-2017.pdf](http://www.khushconsulting.com/wp-content/uploads/2012/04/SALC_Final-Report_Oct-2017.pdf)



# Liberia

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible. <sup>110</sup>
	<b>Laws used against transgender and gender diverse people</b>	
	<b>Legislation</b>	Penal Law of 1976 Vol IV Title 26 Liberian Codes of Law Revised (Rev Ed 1998). <sup>111</sup>
	<b>Quote/details</b>	<p>Section 14.74, Voluntary Sodomy.</p> <p>A person who engages in deviate sexual intercourse under circumstance not stated in Section 14.72 or 14.73 has committed a first-degree misdemeanour.<sup>112</sup></p> <p>Section 14.79, Definitions relating to sections on sexual crimes against the person.</p> <p>In this subchapter:</p> <p>(a) "sexual intercourse" occurs upon penetration, however slight; ejaculation is not required;</p> <p>(b) "deviate sexual intercourse" means sexual contact between human beings who are not husband and wife or living together as man and wife though not legally married, consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and vulva;</p> <p>(c) "sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of arousing or gratifying sexual desire.</p> <p>[DE FACTO CRIMINALISATION]</p>
	<b>Situation</b>	There are no laws in Liberia that <i>de jure</i> criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people have been indirectly criminalised ( <i>de facto</i> criminalisation). <sup>113</sup> The criminalisation of consensual same-sex sex and conduct has been used to subject transgender and gender diverse people to harassment, extortion, arbitrary search, arrest, and detention. <sup>114</sup>
	<b>Examples</b>	<p>In 2010, five transgender women were arrested. A man had asked the trans women to dance and upon their refusal the man reported them to the police for attempting to have sex with him. The trans women were then arrested and detained in cells designated for males. Police ordered the other detainees to have sex with the five trans women because "they wanted to be females."<sup>115</sup> The trans women were then raped and one of the women who is now HIV+ believes that she was infected during the rape.</p> <p>In 2016, a group of transgender people were harassed and attacked by police at a venue where transgender people are known to congregate. The group was interrogated on whether they were selling drugs, which</p>

<sup>110</sup> Source: Karishma, Liberian trans activist.

<sup>111</sup> <http://www.icla.up.ac.za/images/un/use-of-force/africa/Liberia/Penal%20Code%20Liberia%201978.pdf>

<sup>112</sup> Section 50.7 establishes the sentence to imprisonment for misdemeanour: "A person who has been convicted of a misdemeanour may be sentenced to imprisonment for the following terms: For a misdemeanour of the first degree, to a definite term of imprisonment to be fixed by the court for no more than one year; For a misdemeanour of the second degree, to a definite term of imprisonment to be fixed by the court for no more than thirty days.

<sup>113</sup> Police practices in Liberia sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>114</sup> Stop AIDS in Liberia, Transgender Network of Liberia et. al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia*, April 2017, p. 3. [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBR/INT\\_CCPR\\_ICO\\_LBR\\_27270\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBR/INT_CCPR_ICO_LBR_27270_E.pdf); Stop AIDS in Liberia, Transgender Network of Liberia et. al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia*, February 2018, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBR/INT\\_CCPR\\_CSS\\_LBR\\_30237\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBR/INT_CCPR_CSS_LBR_30237_E.pdf)

<sup>115</sup> *Ibid.*, p. 6.



they were not. Officers then said to the group that they “were the ones who are spoiling the country” and then assaulted them, confiscated their phones and attempted to extort them.<sup>116</sup>

In another 2016 case, a transgender woman was mocked by an official of the Ministry of Justice and then barred from boarding a flight to South Africa. While the transgender woman was waiting in the boarding queue, the official came up and told her that she looked strange and funny. Shortly afterward, when the woman tried to board her flight, she was barred from doing so without any explanation. As a result, she was not able to travel to South Africa until the next flight two days later.<sup>117</sup>

In 2017, a transgender female sex worker, was arrested and sent to prison without any investigation or trial when a client reported her for wanting to sodomize him and “turn him gay.”<sup>118</sup>

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<sup>116</sup> Ibid., p. 5.

<sup>117</sup> Ibid., p. 16.

<sup>118</sup> Ibid., p. 4.






# Malawi

	<b>Name change</b>	Nominally possible. As explained below for gender marker change.
	<b>Gender marker change</b>	Nominally possible, with unclear requirements.
	Legislation	National Registration Act 13 of 2010 <sup>119</sup> (not trans-specific).
	Conditions for gender marker change	<p>Section 20(1) provides that where a change in particulars of a registered person materially affect his registration, the district registrar shall record the change and notify the Director of the circumstances and recommend that the person be issued with a new identity card.</p> <p>Section 21(1) provides that every registered person may, when he is satisfied that his appearance has changed so as to make it likely that his identity may be questioned, apply to the district registrar for the issue of a new card with a more recent photograph.</p> <p>Note, however, that under the <i>Marriage, Divorce and Family Relations Act of 2015</i>,<sup>120</sup> sex is defined as “in relation to the gender of a person [and] means sex of that person at birth”. This effectively denies the legal existence of transgender people in Malawi.</p>
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Penal Code (Chapter 7:01.) <sup>121</sup>
	Quote/details	<p>Section 137A, <i>Indecent practices between females</i> (introduced in 2010).</p> <p>Any female person who, whether in public or private, commits any act of gross indecency with another female shall be guilty of an offence and liable to a prison term of five years.</p> <p>Section 153, <i>Unnatural offences</i>.</p> <p>Anyone who –</p> <p>(a) has carnal knowledge of any person against the order of nature; or</p> <p>(b) has carnal knowledge of any animal; or</p> <p>(c) permits a male person to have carnal knowledge of him or her against the order of nature,</p> <p>shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.</p> <p>Section 154, <i>Attempt to commit unnatural offences</i>.</p> <p>Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment.</p> <p>Section 156, <i>Indecent practices between males</i>.</p> <p>Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony and shall be liable to imprisonment for five years, with or without corporal punishment.</p>
[DE FACTO CRIMINALISATION]		

<sup>119</sup> <http://citizenshiprightsafrika.org/wp-content/uploads/2019/11/Malawi-National-Registration-Act-No-13-of-2010.pdf>

<sup>120</sup> <https://malawilii.org/mw/legislation/act/2015/4>

<sup>121</sup> [https://malawilii.org/system/files/consolidatedlegislation/701/penal\\_code\\_pdf\\_14611.pdf](https://malawilii.org/system/files/consolidatedlegislation/701/penal_code_pdf_14611.pdf)

		<p>Section 180, Idle and disorderly person.</p> <p>The following persons –</p> <p>[...]</p> <p>(g) every male person who wears the hair of his head in such a fashion as, when he is standing upright, the main line of the bottom of the mass of hair (other than hair growing on his face or on the nape of his neck) lies below an imaginary line drawn horizontally around his head at the level of the mouth, shall be deemed idle and disorderly persons, and shall be liable for the first offence to a fine of K20 and to imprisonment for three months and for a subsequent offence to a fine of K50 and to imprisonment for six months.</p> <p>[DE JURE CRIMINALISATION]</p>
	<p><b>Legislation</b></p>	<p>Marriage, Divorce and Family Relations Act 2015.<sup>122</sup></p>
	<p><b>Quote/details</b></p>	<p>Section 53, Making false declarations in relation to marriage.</p> <p>A person who makes or issues a false declaration certificate, permit, licence, document or statement by law for the purpose of marriage commits an offence and is liable in conviction to a fine of K100,000 and to imprisonment for twelve months.</p> <p>Section 55, Unlawful performance of ceremony by person not legally competent</p> <p>A person who knowingly and willfully celebrates or purports to celebrate a marriage when he or she is not competent under this Act to do so commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.</p> <p>Section 57, Personation in marriage</p> <p>A person who –</p> <p>(a) impersonates another person in entering into marriage; or</p> <p>(b) marries under a false name or description with the intention to deceive the other party to the marriage,</p> <p>commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.</p> <p>Section 58, Fictitious marriage</p> <p>A person who goes through the ceremony of marriage, or any ceremony which he or she represents to be a ceremony of marriage, knowing that the marriage is void on any ground, and that the other person believes it to be valid, commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.</p> <p>[DE JURE CRIMINALISATION]</p>
	<p><b>Situation</b></p>	<p>The Malawian Penal Code criminalises diverse presentations of gender expression through regulating the hair length of those assigned male at birth.<sup>123</sup></p> <p>The Marriage, Divorce and Family Relations Act criminalises transgender and gender diverse people who attempt to get married. The Act defines sex “in relation to the gender of a person, means the sex of that person at birth.”<sup>124</sup> The implication of this is that any person who identifies themselves as anything other than their sex assigned to them at birth for the purpose of marriage is criminalised.<sup>125</sup></p> <p>Furthermore, as capacity to marry is limited to “two persons of the opposite sex”, where a couple whose sexes assigned at birth are the same, the marriage is void. The implication of this is that if one partner goes through a ceremony of marriage knowing that the marriage will be void and their partner thinks the marriage is valid, the partner who knows that the marriage is void is criminalised. In effect this criminalises</p>

<sup>122</sup> <https://malawilii.org/mw/legislation/act/2015/4>

<sup>123</sup> Section 180 (g) Penal Code (Chapter 7:01).

<sup>124</sup> Section 2 Marriage, Divorce and Family Relations Act 2015.

<sup>125</sup> *Ibid.*, section 53.

transgender or gender diverse people who do not disclose their sex assigned at birth to their partners.<sup>126</sup>

In practice transgender and gender diverse people are largely criminalised under other legal provisions (*de facto* criminalisation).<sup>127</sup> In particular, the criminalisation of adult consensual same-sex conduct has been used to subject transgender and gender diverse people to harassment, extortion, and arbitrary search, arrest and detention.



### Examples

In 2009, Tiwonge Chimbalanga, a woman who was assigned male at birth, and her partner, Steven Soko, a cisgender male held a traditional matrimonial ceremony. The couple was then arrested, charged and subsequently found guilty for violating the sections of the Penal Code that criminalise adult consensual same-sex conduct.<sup>128</sup> In 2010, following a meeting between Malawian President Bingu and UN Secretary-General Ban Ki-moon, the couple were pardoned.<sup>129</sup>

Following this, there has been uncertainty over the enforceability of the laws that criminalise adult consensual same-sex conduct. In 2012, the Ministry of Justice issued a moratorium on arrests and prosecutions for consensual same-sex conduct.<sup>130</sup> However, in 2016, a high court order suspended the moratorium pending judicial review by the Constitutional Court.<sup>131</sup> At present there are no further details on when the judicial review will take place.

While there have been no reported convictions under the provisions that criminalise consensual same-sex conduct since 2010, there have been several reports that these provisions are being used to arrest, charge and harass people.<sup>132</sup> This include transgender and gender diverse people who “are often misread by police as “lesbian” or “gay”” because of their gender expression.”<sup>133</sup>

Human Rights Watch documented multiple cases illustrating this:

In October 2010, Aaron, a 26-year-old transgender man, was arrested along with his girlfriend at his house in Lilongwe, after this had been arranged by his partner’s mother. At the police station the couple was not formally charged. After spending a night in the holding cells, the couple managed to escape and fled from Lilongwe for a month fearing that they might be re-arrested.<sup>134</sup>

In June 2015, Justice, a transgender human rights activist, was arrested and detained for several hours at Lilongwe police station after trying to make bail payment for a detained friend. Justice commented that, “The police officers at the front desk took one look at me, saw my gender presentation and the clothes I was wearing, concluded that I am a ‘lesbian,’ detained me and only let me go when they realised that my uncle is a politician in the regional government.”<sup>135</sup>

In December 2017, Justice was burgled. When Justice went to report this to the police at the station, they refused to open a case. Instead Justice was threatened with arrest on charges of homosexuality and detained him for several hours. He was then release after paying a bribe.<sup>136</sup>

In November 2017, a transgender woman was attacked by a mob in a Lilongwe market. Police then arrested the transgender woman because they suspected she was gay and let her assailants go. Police then

<sup>126</sup> Centre for the Development of the People (CEDEP), a human rights organization in Malawi working on LGBTQI+ rights.

<sup>127</sup> Malawian police practices consistently sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>128</sup> *R v Monjeza and Chimbalanga*, Blantyre Magistrate’s Court, 20 May 2010.

<sup>129</sup> BBC News, “Malawi gay couple get maximum sentence of 14 years”, 20 May 2010. <https://www.bbc.com/news/10130240>

<sup>130</sup> Godfrey Mapondera & David Smith, “Malawi suspends anti-gay laws as MPs debate repeal”, *The Guardian*, 5 November 2012. <https://www.theguardian.com/world/2012/nov/05/malawi-gay-laws-debate-repeal>

<sup>131</sup> *The State v Minister of Justice and Constitutional Affairs and Others Ex-Parte Kammasamba and Others (17 of 2016) [2016] MWHC 503 (11 May 2016)*.

<sup>132</sup> Human Right Watch: Wendy Isaack, “*Let Posterity Judge*”: *Violence and Discrimination against LGBT people in Malawi*, 2018. [https://www.hrw.org/sites/default/files/report\\_pdf/malawi1018\\_lgbt\\_web2.pdf](https://www.hrw.org/sites/default/files/report_pdf/malawi1018_lgbt_web2.pdf)

<sup>133</sup> *Ibid.*, p. 13.

<sup>134</sup> *Ibid.*, p. 17.

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*, p. 19.

interrogated the woman and got the details of another transgender woman, Olivia. Police then attempted to arrest Olivia at her home, but unable to locate her they arrested her father in her place. Olivia then went to the police station to find her father. She was then questioned on whether she was gay. Olivia recounted that “One of the officers said that because of the way I look and dress, I must be gay. They started slapping and punching me, forcing me to confess that I am “gay.” The beating lasted for more than an hour. They told me to come back the next day. When I arrived, they immediately took me into a cell, but did not charge me with any crime. I was detained for five hours, and finally released when my mother paid 5000 MWK [US\$7].”



Additionally, Olivia reported that her friend, who had been assaulted in the market, was detained, without any formal charge, for a month in Maula Prison, in Lilongwe.<sup>137</sup>

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<sup>137</sup> Ibid., pp. 16-17.



## Morocco

	<b>Name change</b>	Not possible. <sup>138</sup>
	<b>Gender marker change</b>	Not possible.

<sup>138</sup> According to Olivia Leone Nicholas, *Life in Purple: An Exploration of Moroccan LGBT+ Identity and Migration* (2017), "Transgender people in Morocco are not permitted to legally change their names to match their gender, nor do they receive protection from the government against discrimination."



# Mozambique

	<b>Name change</b>	Nominally possible. <i>As explained below for gender marker change.</i>
	<b>Gender marker change</b>	Nominally possible, with unclear requirements.
	<i>Legislation</i>	<i>Código do Registo Civil 2004 (not trans-specific).</i>
	<i>Documents amended</i>	Identity card.
	<i>Conditions for gender marker change</i>	<p>Section 85(1) gives the Civil Registrar general authority to make changes when there is a change of facts which alter the legal identity or status of the person registered.</p> <p>Trans people could use this section to change the sex description on their identity document.</p>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Situation</i>	<p>Mozambican law does not criminalise transgender and gender diverse people.</p> <p>In the 2018 report on Mozambique by the Independent Expert on SOGI, it was noted that police officers often harass and discriminate against transgender sex workers. In some cases, transgender sex workers who attempted to report violent and abusive clients had been subjected to arbitrary arrest and only released on the payment of a bribe.<sup>139</sup></p>

<sup>139</sup> UN Human Rights Council, *Visit to Mozambique: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity A/HRC/41/45/Add.2* (17 May 2019), para 62. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/140/82/PDF/G1914082.pdf?OpenElement>.





# Namibia

	<b>Name change</b>	Possible. As explained below for gender marker change.
	Legislation	<i>Births, Marriages and Deaths Registration Act 81 of 1963; Identification Act 2 of 1996, section 8; Identification Act 2 of 1996, section 12.</i>
	Quote/details	<p>Alteration of person's name in his birth register</p> <p>8. (1) When the birth of any person has been registered and the name under which his birth was registered, is altered, either of his parents or his guardian, if he is under 18 years of age, or he himself, if he is 18 years of age or over, may apply to the Secretary for the alteration of his name and thereupon the Secretary may, if satisfied that the applicant is competent to make the application, amend the registration of the said person's birth by inscribing the altered name on the birth register of such person filed in his office, but without erasing the original name therefrom.</p>
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	Legislation	<i>Births, Marriages and Deaths Registration Act 81 of 1963, section 7B; Identification Act 2 of 1996 (not trans-specific), section 12.</i>
	Quote/details	<p><i>Births, Marriages and Deaths Registration Act 81 of 1963,</i></p> <p>7B. The Secretary may on the recommendation of the Secretary of Health, alter in the birth register of any person who has undergone a change of sex, the description of the sex of such person and may for this purpose call for such medical reports and institute such investigations as he may deem necessary.</p>
	Conditions for gender marker change	<p>The Act does not define "change of sex". Applications in terms of s.7B are done on a case-by-case basis- as long as a person can provide medical reports of their "change of sex".</p> <p>Once the application is granted, a trans person can apply for a new identity document and passport. Namibia does not provide gender affirming healthcare in the public health system, making the Act largely inaccessible.</p> <p>A transgender person who has not had a "change of sex" could use s.12(1)(a) of the <i>Identification Act 2 of 1996</i>. It states that "if an identity document does not reflect correctly the particulars of the person to whom it was issued, or contains a photograph which is no longer a recognizable image of that person", the person shall hand over the identity document to the Minister. Section 12(3) states that the Minister shall cancel it and replace it with an improved identity document. However, the majority of trans people who have made applications to update their photographs have not been successful.</p>
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	<i>Combating of Immoral Practices Act 21 of 1980.</i> <sup>140</sup>
	Quote/details	<p>Section 7, Enticing to commission of immoral acts.</p> <p>Any person who -</p> <p>(b) wilfully and openly exhibits himself in an indecent dress or manner at any door or window or within view of any public street or place or in any place to which the public have access, shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.</p>

<sup>140</sup> [http://www.lac.org.na/laws/annoSWA/CRIMINAL%20LAW%20AND%20PROCEDURE%20\(1980\)%20-%20Combating%20of%20Immoral%20Practices%20Act%2021%20of%201980%20\(annotated\).pdf](http://www.lac.org.na/laws/annoSWA/CRIMINAL%20LAW%20AND%20PROCEDURE%20(1980)%20-%20Combating%20of%20Immoral%20Practices%20Act%2021%20of%201980%20(annotated).pdf)



		<p>Section 8, Committing of immoral acts.</p> <p>Any person who in public commits any immoral act with another person shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.</p> <p>Section 9, Permitting of offence in terms of this Act by owner or occupier of premises.</p> <p>Any person who is the owner or occupier of any house or place or has or acts or assists in the management or control thereof, knowingly permits the use of such house or place for the purpose of committing any offence in terms of any provision of this Act, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years or to such imprisonment and to a fine not exceeding one thousand rand.</p> <p>Section 10, Living on earnings of prostitution and assistance in relation to commission of immoral acts.</p> <p>Any person who –</p> <p>(a) knowingly lives wholly or in part on the earnings of prostitution; or</p> <p>(b) in public or in private in any way assists in bringing about, or receives any consideration for, the commission by any person of any immoral act with another person,</p> <p>shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.</p> <p>[DE FACTO CRIMINALISATION]</p>
	<p><b>Situation</b></p>	<p>Namibian law does not directly criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people are indirectly criminalised (<i>de facto</i> criminalisation). The Roman-Dutch common law's criminalisation of sodomy, and legislation criminalising 'immoral practices', sex-work and loitering,<sup>141</sup> while seldom used to arrest and detain transgender and gender diverse people,<sup>142</sup> have been used to subject transgender and gender non-conforming people to harassment and arbitrary search.<sup>143</sup></p> <p>Notably, schedule 1 of the Criminal Procedure Act 25 of 2004<sup>144</sup> lists sodomy as a Schedule 1 offence, for which police are authorised to make an arrest without a warrant or to use deadly force in the course of arrest. Among other aspects, the Act also allows a private person to make an arrest without a warrant.<sup>145</sup></p>
	<p><b>Examples</b></p>	<p>In a 2014 article, Mama Africa, a transgender sex worker, recounted being arrested by the police after finding condoms in her bag. She was then placed in a male cell with other inmates who then raped her.<sup>146</sup></p>

<sup>141</sup> For example, Windhoek's municipal street and traffic regulations criminalise loitering and soliciting.

<sup>142</sup> Gender Research and Advocacy Project Legal Assistance Center, Namibian Law on LGBT Issues, 2015, p.66-68.

<sup>143</sup> Southern Africa Litigation Centre, *Laws and Policies Affecting Transgender Persons in Southern Africa*, 2016, p. 35-36; Open Society Institute, *Rights not Rescue: A Report on Female, Male, and Trans Sex Workers' Human Rights in Botswana, Namibia, and South Africa*, 2009, [https://www.opensocietyfoundations.org/uploads/f5b172b7-e581-445f-ad9c-dd6dd0398939/rightsnotrescue\\_20090706.pdf](https://www.opensocietyfoundations.org/uploads/f5b172b7-e581-445f-ad9c-dd6dd0398939/rightsnotrescue_20090706.pdf)

<sup>144</sup> [https://laws.parliament.na/cms\\_documents/criminal-procedure--72901768c7.pdf](https://laws.parliament.na/cms_documents/criminal-procedure--72901768c7.pdf)

<sup>145</sup> Criminal Procedure Act 25 of 2004 sections 38, 42, 44, 63, and 112.

<sup>146</sup> Jordaania Andima, "A night with transgender sex workers in Windhoek", *The Namibian*, 28 March 2014, <https://www.namibian.com.na/index.php?id=121547&page=archive-read>



# Nigeria

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.
	<i>Situation</i>	<p><b>Note:</b> According to <i>The Initiative for Equal Rights in Nigeria et al. (2019)</i>, "Nigeria does not allow transgender people to rectify their legal name and gender markers on official documents. Transgender persons must use official documents that do not reflect their identity and are therefore exposed to great discrimination and obstacles to their ability to access services essential to the realization of fundamental rights."</p>



# Rwanda

	<b>Name change</b>	Not possible. <sup>147</sup>
	<b>Gender marker change</b>	Not possible. <sup>148</sup>
	<b>Laws used against transgender and gender diverse people</b>	
	<b>Legislation</b>	Law determining offences and penalties in general. <sup>149</sup>
	<b>Quote/details</b>	<p>Article 143, Public indecency.</p> <p>Any person who performs an indecent act in public, commits an offence. Upon conviction, he/she is liable to imprisonment for a term of not less than six (6) months and not more than two (2) years.</p> <p>Article 236, Insults or defamation against the President of the Republic.</p> <p>Any person who insults or defames the President of the Republic, commits an offence. Upon conviction, he/she is liable to a term imprisonment of not less than five (5) years and not more than seven (7) years and a fine of more than five million (FRW 5,000,000) Rwandan francs and not more than seven million (FRW 7,000,000) Rwandan francs.</p> <p>[DE FACTO CRIMINALISATION]</p>
	<b>Situation</b>	<p>There are no laws in Rwanda that <i>de jure</i> criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people have been indirectly criminalised (<i>de facto</i> criminalisation).<sup>150</sup></p> <p>Under the 2012 Penal Code<sup>151</sup> the criminalisation of sex work and vagrancy were used to subject transgender and gender diverse people to harassment, extortion, arbitrary search, arrest and detention<sup>152</sup> by the police and <i>Inkeragutabara</i>.<sup>153</sup></p> <p>Under the new Law determining offences and penalties in general, the criminalisation of the possession of illegal substances, insulting and/or criticising the president,<sup>154</sup> and public order provisions have been indicated as contributing to the criminalisation of transgender and gender diverse people.<sup>155</sup> Transgender and gender diverse people have reported being harassed by police who accuse them of trying to recruit young people into illegal activities. Additionally, some transgender people are arbitrarily searched, arrested and detained without being given any reason.<sup>156</sup></p>
	<b>Examples</b>	Transgender, gender diverse people, and sex-workers who the police and <i>Inkeragutabara</i> decide are 'vagabonds' or 'prostitutes' reported being arbitrarily detained in centres, such as the Gikondo Transit Centre. <sup>157</sup> Opened to decrease people wandering on the streets of Kigali, the

<sup>147</sup> Confirmed by Carter Honorée Wolf, trans activist, Rwanda.

<sup>148</sup> Ibid.

<sup>149</sup> <http://www.therwandan.com/wp-content/uploads/2018/10/The-New-Rwanda-Penal-Code.pdf>

<sup>150</sup> Police and *Inkeragutabara* practices in Rwanda sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>151</sup> [https://www.unodc.org/res/cld/document/rwa/1999/penal-code-of-rwanda\\_html/Penal\\_Code\\_of\\_Rwanda.pdf](https://www.unodc.org/res/cld/document/rwa/1999/penal-code-of-rwanda_html/Penal_Code_of_Rwanda.pdf)

<sup>152</sup> Irwin Iradukunda and Roselyn Odoyo, *Agaciro: A landscape analysis of the human rights of sex workers and LGBT communities in Rwanda*, 2016, <http://awdfilibrary.org/handle/123456789/370>.

<sup>153</sup> The reserve force of the Rwanda Defence Forces.

<sup>154</sup> It was reported that the implication of this law has been to contribute criminalisation of activists who speak out against the president in relation to the human rights violations against transgender and gender non-conforming people in Rwanda.

<sup>155</sup> Rwanda Gender Pride, a human rights organisation in Rwanda working on the rights of transgender and gender non-conforming persons.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

Center aims to do this “by involving them in a socio-professional training program before reintegrating them back into society.”<sup>158</sup> The Center is reportedly not recognised by law *per se*. Thus, the “processes utilised within the transit centre appear to exist in abstract without proper regulation and close monitoring of how this centre and others like it are run. The lack of any form of documented legal detention procedures and conditions makes it an arbitrary detention centre.”<sup>159</sup>

In 2014, Bobette, a transgender woman, reported that police had arrested her at a nightclub in Kigali.<sup>160</sup> She was not provided with any reason for her arrest. Bobette was then detained at Gikondo Transit Center for a week where she was assaulted by other inmates. At Kwa Kabuga officials cut her hair.<sup>161</sup>

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<sup>158</sup> Ibid.











<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

<sup>161</sup> France24, Rwanda - Enfermé une semaine par la police car homosexuel, 15 November 2014, <https://www.youtube.com/watch?v=0tn1iBTos4I>.







## South Africa

	<b>Name change</b>	Possible, with unclear requirements. <i>See gender marker process below.</i>
	Legislation	<i>Births and Deaths Registration Act 51 of 1992, section 24.</i> <sup>162</sup>
	Quote/details	<p>Under section 24 a person can apply to alter their forename which was registered at their birth.</p> <p>Applicants have reported being unable to process simultaneous gender marker and name change requests before the Department of Home Affairs.</p>
	<b>Gender marker change</b>	Possible, with unclear and prohibitive requirements.
	Legislation	<i>Alteration of Sex Status and Sex Descriptor Act, No.49 of 2003</i> <sup>163</sup> (trans and intersex specific).
	Documents amended	Identity card, birth register.
	Conditions for gender marker change	<div data-bbox="756 853 1422 999" style="border: 1px solid #ccc; padding: 5px;"> <p><i>(2) Any person whose sexual characteristics have been altered by surgical or medical treatment or by evolution through natural development resulting in gender reassignment, or any person who is intersexed may apply to the Director-General of the National Department of Home Affairs for the alteration of the sex description on his or her birth register.</i></p> </div> <p>The Act requires that an application is submitted with a birth certificate and a letter from two separate medical practitioners confirming the sex reassignment procedures have taken place. This Act does not require sex reassignment surgery for the alteration of the sex description on the birth register.</p> <p>There are currently no directives from the National Department of Home Affairs on how to interpret the Act. In practice, this has caused inconsistencies in approach and arbitrary obstacles such as requiring proof of sex reassignment surgery, long waiting periods for applications to be processed (averaging 1-7 years), what forms to use and what documents an applicant must submit. South African organizations working to protect transgender people's rights have recommended that directives be issued to remedy these problems.</p>
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	<i>Sexual Offences Act 23 of 1957.</i> <sup>164</sup>
	Quote/details	<div data-bbox="756 1556 1422 1910" style="border: 1px solid #ccc; padding: 5px;"> <p><i>Section 12A, Assistance for purposes of unlawful carnal intercourse.</i></p> <p><i>(1) Any person who, with intent or while he reasonably ought to have foreseen the possibility that any person, who is 18 years or older, may have unlawful carnal intercourse, or commit an act of indecency, with any other person for reward, performs for reward any act which is calculated to enable such other person to communicate with any such person, who is 18 years or older, shall be guilty of an offence.</i></p> <p><i>Section 19, Enticing to commission of immoral acts.</i></p> <p><i>(1) Any person who entices, solicits, or importunes in any public place for immoral purposes, shall be guilty of an offence.</i></p> <p><i>(2) Any person 18 years or older who wilfully and openly exhibits himself or herself in an indecent dress or manner at any door or window or within view of</i></p> </div>

<sup>162</sup> <https://www.gov.za/documents/births-and-deaths-registration-act>

<sup>163</sup> <https://www.gov.za/documents/alteration-sex-description-and-sex-status-act>

<sup>164</sup> <http://www.justice.gov.za/legislation/acts/1957-023.pdf>

		<p>any public street or place or in any place to which the public have access, shall be guilty of an offence.</p> <p>Section 20, Persons living on earnings of prostitution or committing or assisting in commission of indecent acts.</p> <p>(1) Any person who-</p> <p>(a) knowingly lives wholly or in part on the earnings of prostitution; or</p> <p>(b) .....</p> <p>(c) in public or in private in any way assists in bringing about, or receives any consideration for, the commission by any person of any act of indecency with another person, shall be guilty of an offence.</p> <p>(1A) Any person 18 years or older who-</p> <p>(a) has unlawful carnal intercourse, or commits an act of indecency, with any other person for reward; or</p> <p>(b) in public commits any act of indecency with another person, shall be guilty of an offence.</p> <p>(2) If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house is used for purposes of prostitution and that any person residing in or frequenting the house is living wholly or in part on the earnings of prostitution, the magistrate may issue a warrant authorizing any police officer not below the rank of sergeant to enter and search the house and to arrest that person.</p> <p>[DE FACTO CRIMINALISATION]</p>
	Legislation	Identification Act of 1997. <sup>165</sup>
	Quote/details	<p>Section 18, Offences and penalties.</p> <p>(1) No person shall –</p> <p>i) possess any identity card or any part thereof, a certificate or temporary identity certificate which has been imitated, altered, defaced or mutilated or any particulars of which are incorrect.</p> <p>Section 19, Correction, cancellation and replacement.</p> <p>(1) If –</p> <p>(a) an identity card does not reflect correctly the particulars of the person to whom it was issued; or</p> <p>(b) a temporary identity certificate or any certificate does not reflect correctly the particulars of the person to whom it was issued,</p> <p>the person concerned or the guardian of the person to whom the card or certificate was issued, as the case may be, shall within the prescribed period hand over or send by registered post the identity card, temporary identity certificate or certificate, as the case may be, to the Director-General.</p> <p>[DE FACTO CRIMINALISATION]</p>
	Legislation	<p>Drugs and Drug Trafficking Act 140 of 1992.<sup>166</sup></p> <p>[DE FACTO CRIMINALISATION]</p>
	Situation	<p>South African laws that prohibit unfair discrimination based on sex and gender have been successfully relied on to protect the rights of trans and gender diverse people.<sup>167</sup> Despite this, there are a substantial number of transgender and gender diverse people in South Africa who are criminalised for engaging in sex work.<sup>168</sup> Public order by-laws that criminalise loitering and homelessness are also used to</p>

<sup>165</sup> [https://www.gov.za/sites/default/files/gcis\\_document/201409/a68-97.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a68-97.pdf)

<sup>166</sup> [https://www.gov.za/sites/default/files/gcis\\_document/201409/a1401992.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a1401992.pdf)

<sup>167</sup> *Ehlers v Bohler Udderholm Africa (Pty) Ltd* (2010) 31 ILJ 2383 (LC); *KOS v Minister of Home Affairs* 2017 (6) SA 588 (WCC).

<sup>168</sup> Zoe Samudzi and Jenevieve Mannell, "Cisgender male and transgender female sex workers in South Africa: gender variant identities and narratives of exclusion", *Culture, Health & Sexuality* 18.1., 2016, pp.1-14.

disproportionately target transgender and gender diverse sex workers.<sup>169</sup>

The criminalisation of drug use is often used as a justification to harass, victimise and prosecute marginalised transgender and gender diverse people who use drugs or are perceived to use drugs.<sup>170</sup>

The law also criminalises people who alter their sex description on the birth register but fail to obtain new identification documentation. This is because the consequence of a sex description alteration is to make an applicant's previous documentation incorrect as it reflects the sex assigned to them at birth. Possessing incorrect identification documentation is a criminal offence.<sup>171</sup> To avoid this, it has been suggested that amended identification documentation be automatically issued with a successful sex description alteration.<sup>172</sup>



### Examples

In a group interview in Cape Town, 17 transgender and gender diverse sex workers reported having been harassed, arrested, and detained by police based on their actual or perceived participation in activities related to sex work. Furthermore, that police specifically target transgender and gender diverse sex workers because of their gender identities and expressions. It was also reported that police often detain transgender and gender diverse sex workers in police vans for hours before releasing them without charges and that police permanently confiscate their belongings.<sup>173</sup>

<sup>169</sup> Contributions from Sistaazhood, a community of transgender and gender diverse sex workers based in Cape Town.

<sup>170</sup> Contributions from Gender DynamiX, an African based organisation solely focusing on the Rights of the Transgender Community and contributions from Sistaazhood.

<sup>171</sup> Section 18 Identification Act of 1997.

<sup>172</sup> Maxine Rubin, Right to Identity: The Implementation of the Alteration of Sex Description Act, Legal Resource Center, <http://resources.lrc.org.za/right-to-identity-the-implementation-of-the-alteration-of-sex-description-act/>

<sup>173</sup> Contributions from Sistaazhood.





# Tanzania

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Penal Code <sup>174</sup> Chapter XV: Offences Against Morality (1945) (as amended by the Sexual Offences Special Provisions Act, 1998). <sup>175</sup>
	Quote/details	<p>Section 145, Living on earnings of prostitutes.</p> <p>(1) Every male person who – knowingly lives wholly or in part on the earnings of prostitution; or in any public place persistently solicits or importunes for immoral purposes, is guilty of a misdemeanour. In the case of a second or subsequent conviction under this section the court may, in addition to any term of imprisonment awarded, sentence the offender to corporal punishment.</p> <p>(2) Where a male person is proved to live with or to be habitually in the company of a prostitute/or is proved to have exercised control, direction or influence over the movements of a prostitute in such manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall unless he shall satisfy the court to the contrary be deemed to be knowingly living on the earnings of prostitution.</p> <p>Section 146, Women aiding and abetting prostitutes.</p> <p>Every woman who knowingly lives wholly or in part on the earnings of prostitution or who is proved to have, for the purpose of gain, exercised control, direction or, influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution, with any person, or generally, is guilty of a misdemeanour.</p> <p>Section 147, Power of search.</p> <p>If it is made to appeal to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a woman of girl for purposes of prostitution, and that any person residing in or frequenting the house is knowingly living wholly or in part on the earnings of the prostitute, or is exercising control, direction or influence over the movements of the prostitute the magistrate may issue a warrant authorizing any police officer to enter and search the house and to arrest such person.</p> <p>Section 148, Brothels.</p> <p>Any person who keeps a house, room, set of rooms or place of any kind whatsoever for the purposes of prostitution is guilty of a misdemeanour.</p> <p>Section 154, Unnatural offences.</p> <p>(1) A person who: has carnal knowledge of any person against the order of nature; or [...] (c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence, and is liable to imprisonment for life and in any case to imprisonment for a term of not less than thirty years.</p> <p>(2) Where the offence under subsection (1) of this section is committed to a child under the age of ten years the offender shall be sentenced to life imprisonment.</p> <p>Section 155, Attempt to commit unnatural offences.</p>

<sup>174</sup> <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/59637/104199/F-1839757965/TZA59637.pdf>

<sup>175</sup> <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/67094/63635/F532037758/TZA67094.pdf>



		<p>Any person who attempts to commit any of the offences specified under section 154 commits an offence and shall on conviction be sentenced to imprisonment for a term of not less than twenty years.</p> <p>Section 157, Gross indecency.</p> <p>Any male person who, whether in public or private, commits any act of gross indecency with another male person or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person, with himself or with another male person, whether in public or private, commits an offence and is liable to imprisonment for five years.</p> <p>Section 3, Interpretation.</p> <p>Defines "gross indecency" as any sexual act that is more than ordinary but falls short of actual intercourse and may include masturbation and indecent physical contact or indecent behaviour without any physical contact.</p> <p>Section 138A, Gross indecency (introduced by the Sexual Offences Special Provisions Act, 1998).</p> <p>Any person who, in public or private commits, or is party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, commits an offence and is liable on conviction to imprisonment for a term of not less than one year and not exceeding five years or to a fine not less than one hundred thousand shillings and not exceeding three hundred thousand shillings. [...]</p> <p>Section 176, Idle and disorderly persons.</p> <p>(1) very common prostitute behaving in a disorderly or indecent manner in any public place or loitering or, soliciting in any public place for the purpose of prostitution;</p> <p>[...]</p> <p>(5) every person who publicly conducts himself in a manner likely to cause a breach of the peace;</p> <p>(6) every person who without lawful excuse publicly does any indecent act; and</p> <p>(7) every person who in any public place solicits for immoral purposes.</p> <p>shall, be deemed idle and disorderly persons, and shall be liable to a fine not exceeding five hundred shillings or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.</p>
	[DE FACTO CRIMINALISATION]	
	Legislation	Penal Decree (Amendment) Act (2004). <sup>176</sup> Applies to Zanzibar only. <sup>177</sup>
	Quote/details	<p>Section 140, Offence of prostitution</p> <p>Any person who for consideration offers her or his body for sexual intercourse commits an offence and shall on conviction be liable to imprisonment for a term of three years.</p> <p>Section 145.</p> <p>Any woman who commits an act of lesbianism with another woman whether taking an active or passive role shall be guilty of an offence and liable on conviction to a term not exceeding five years or to a fine not exceeding 500,000 shillings.</p> <p>Section 145 D, Union of the person of the same sex</p> <p>Any person who:</p> <p>enters or arranges a union whether amounting to marriage or not of the person of the same sex;</p> <p>celebrates a union with another person of the same sex whether amounting to marriage or not;</p> <p>lives as husband and wife with another person of the same sex;</p>

<sup>176</sup> [http://www.zanzibarassembly.go.tz/act\\_2004/act\\_6.pdf](http://www.zanzibarassembly.go.tz/act_2004/act_6.pdf)

<sup>177</sup> Zanzibar's penal code's harsher provisions are listed.

*shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding seven years.*

[DE FACTO CRIMINALISATION]



**Situation**

There are no laws in Tanzania, that *de jure* criminalise transgender and gender diverse people. However, in practice, transgender and gender diverse people have been indirectly criminalised (*de facto* criminalisation).<sup>178</sup> The criminalisation of consensual same-sex sex and conduct, sex work and activities associated to sex-work, public indecency, and public order provisions have been used to subject transgender and gender diverse people to police and *Sungu Sungu*<sup>179</sup> harassment, blackmail, extortion, raids, and arbitrary search, arrest, and detention. Individuals are often detained and subsequently released without charge.



**Examples**

**2009**

In 2009, Alex N., a transgender man in Dar es Salaam, was arrested after being reported to the police for being a lesbian and having a “bad attitude” by the manager at the bar where he worked. At the police station Alex was sexually assaulted by the police, they made him take off his clothes and touched his breasts and vagina. They beat him with a belt and forced him to wear women’s clothing and clean the police station. He was detained for six days before being released.<sup>180</sup>

**2013**

In a 2013 Human Rights Watch report, Jessie L., a transgender woman and sex worker in Dar es Salaam said she had been arrested for sex work more than 10 times. She was sexually assaulted by the police on at least one of these arrests.<sup>181</sup>

**2015**

In 2015, Maua Sadick, a transgender man and his female partner, Lucy Fred, were arrested in Dar es Salam on suspicion of violating the provisions against same-sex intimacy. During their arrest, the couple was verbally harassed and assaulted by the police. The couple were detained for two days before being released.<sup>182</sup>

In a 2015 UHAI EASHRI report, Delilah, a transgender woman in Dar es Salaam reported that “Because of how we identify and how we express ourselves, they (society, police and *Sungu Sungu*) just call us ‘shoga’ or ‘msagaji’ or ‘msenge’”. They take our money, solicit bribes both monetary and sexual, strip us naked, beat us, chase after us in public, and remove our wigs. For trans men, they strip them and oftentimes rape them, especially because of the androgynous look they usually have.”<sup>183</sup> Max, a transgender man in Dar es Salaam also commented that reporting the police and *Sungu Sungu* for violating transgender and gender diverse people’s rights is difficult because “it is like they are above the law.”<sup>184</sup>

**2017**

A 2017 report documents a case where Mwamba Nyanda, a transgender individual was held and questioned at the Dar es Salaam airport. An Immigration Officer asked Mwamba “are you a man or a woman?” Mwamba then presented his birth certificate. Dissatisfied with this, Mwamba was then asked to strip. Despite refusing, immigration officials

<sup>178</sup> Police and *Sungu Sungu* practices in Tanzania sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>179</sup> The term has come to be used to describe any neighbourhood militia. In theory, *Sungu Sungu* operate under the guidance of the local government and the police, but in some areas, they appear to operate on their own. The People’s Militia Act of 1973, amended in 1989 to make specific reference to the *Sungu Sungu*, grants them the power to make arrests (The United Republic of Tanzania, Act No. 9 of 1989, An Act to amend laws pertaining to the powers and operations of People’s Militia).

<sup>180</sup> Human Rights Watch, “Treat Us Like Human Beings” Discrimination against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania, 2013, p. 46, <https://www.hrw.org/report/2013/06/18/treat-us-human-beings/discrimination-against-sex-workers-sexual-and-gender>

<sup>181</sup> *Ibid.*, p. 47.

<sup>182</sup> “Tanzania: Trans man, wife arrested on gay-sex charges”, Erasing 76 Crimes, 30 January 2015. <https://76crimes.com/2015/01/30/tanzania-trans-man-wife-arrested-on-gay-sex-charges/>

<sup>183</sup> UHAI EASHR, *Landscape analysis of the human rights of Sex Workers & LGBTI communities in Tanzania 2015–2016*, 2015, p. 44.

<sup>184</sup> *Ibid.*, p. 19.

insisted until Mwamba felt he had no choice but to strip in the presence of seven officials.<sup>185</sup>

In 2017 anti-LGBT crackdowns took place.<sup>186</sup>

#### 2018

In 2018, Regional Commissioner for Dar es Salaam Paul Makonda announced plans to form a task force to identify and arrest LGBTI people and asked members of the public to collaborate by reporting suspected LGBTI people.<sup>187</sup> Following local and international criticism, the Ministry of Foreign Affairs and East African Cooperation issued a statement distancing the government's position from Regional Commissioner Makonda.<sup>188</sup> However, many activists and non-activists remain afraid and alert for their own safety. For example, Melody, a transgender woman noted that during this period she fled Tanzania to Kenya fearing arrest after she had been outed online by someone who, conflating her gender identity with her sexual orientation, perceived her as gay.<sup>189</sup>

<sup>185</sup> Southern Africa Litigation Centre, *Regional Advocacy Meeting on Developing Strategies to Challenge Police Abuse of Marginalised Persons*, 2012, p. 13. [http://www.khushconsulting.com/wp-content/uploads/2012/04/SALC\\_Final-Report\\_Oct-2017.pdf](http://www.khushconsulting.com/wp-content/uploads/2012/04/SALC_Final-Report_Oct-2017.pdf).

<sup>186</sup> Human Rights Watch, "Uganda: Police Raid Queer Kampala Film Festival," 15 December 2017. <https://www.hrw.org/news/2017/12/15/uganda-police-raid-queer-kampala-film-festival>.

<sup>187</sup> The East African, "Dar es Salaam regional commissioner launches anti-gay clampdown", 30 October 2018. <https://www.theeastafrican.co.ke/news/ea/Tanzania-city-governor-launches-anti-gay-witch-hunt/4552908-4828966-gnjmdx/index.html>.

<sup>188</sup> Human Rights Watch, "Tanzania: Mixed Messages on Anti-Gay Persecution", 6 November 2018. <https://www.hrw.org/news/2018/11/06/tanzania-mixed-messages-anti-gay-persecution>.

<sup>189</sup> Amina Hersi, "Tanzania: One transgender woman's pain amid fears of arrest", Amnesty International, 9 November 2018. <https://www.amnesty.org/en/latest/campaigns/2018/11/tanzania-one-transgender-womans-pain-amid-fears-of-arrest/>



# Tunisia



## Laws used against transgender and gender diverse people



### Legislation

Penal Code 1913 (as amended).<sup>190</sup>



### Quote/details

Article 230.

Sodomy, when not covered by any of the cases provided for in preceding articles, is punishable by three years' imprisonment.

Article 226.

Anyone found guilty of deliberately and publicly promoting indecency shall be subject to six months' imprisonment and a fine of 48 dinars.

[DE FACTO CRIMINALISATION]



### Situation

There are no laws in Tunisia that *de jure* criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people have been indirectly criminalised (*de facto* criminalisation).<sup>191</sup> The criminalisation of consensual same-sex sex and conduct and public indecency provisions have been used to subject transgender and gender diverse people to harassment, arbitrary search, arrest, and detention.<sup>192</sup>



### Examples

In November 2016, police arrested a trans woman at a Halloween party for dressing as a woman and telling the police that she was a woman. She was charged with public indecency. During her arrest and at the police station she was subjected to torture, humiliation and taunting based on her gender identity. In January 2017 a district court in Hammamet ordered that she be detained for four months in prison.<sup>193</sup> After serving a few weeks of this sentence the Tunisian Appeals Chamber ordered her provisional release and a review of her trial. The Appeal Court decided to free her but required her to pay a fine.

In September 2018, the same trans woman was re-arrested for public indecency. However, the court did not find her guilty.<sup>194</sup>

<sup>190</sup> <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61250/60936/F1198127290/TUN-61250.pdf>

<sup>191</sup> Police practices in Tunisia sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>192</sup> Amnesty International, Assaulted and Accused: Sexual and Gender-Based Violence in Tunisia, 2015. <https://www.amnesty.org/download/Documents/MDE3028142015ENGLISH.PDF/>

<sup>193</sup> Tunisian police arrest and humiliate trans youth, 4 November 2016, <https://76crimes.com/2016/11/04/tunisian-police-arrest-and-humiliate-trans-youth/>; Tunisian judge jails trans woman pending indecency trial, 19 January 2017, 76 Crimes, <https://76crimes.com/2017/01/19/tunisian-judge-jails-trans-woman-pending-indecency-trial/>

<sup>194</sup> All Out, "Trans people under attack in Tunisia" <https://allout.org/en/highlights/trans-people-under-attack-tunisia>.



# Uganda

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Penal Code (1950) VI Laws of Uganda, Cap. 120 (rev. ed. 2000). <sup>195</sup>
	Quote/details	<p>Section 136, Person living on earnings of prostitution.</p> <p>(1) Every person who knowingly lives wholly or in part on the earnings of prostitution and every person who in any place solicits or importunes for immoral purposes commits an offence and is liable to imprisonment for seven years.</p> <p>(2) Where a person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he or she is aiding, abetting or compelling his or her prostitution with any other person, or generally, that person shall, unless he or she shall satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.</p> <p>Section 137, Brothels.</p> <p>Any person who keeps a house, room, set of rooms or place of any kind for purposes of prostitution commits an offence and is liable to imprisonment for seven years.</p> <p>Section 138, Definition of prostitute and prostitution.</p> <p>In this Code, "prostitute" means a person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain, and "prostitution" shall be construed accordingly.</p> <p>Section 139, Prohibition of prostitution.</p> <p>Any person who practises or engages in prostitution commits an offence and is liable to imprisonment for seven years.</p> <p>Section 145, Unnatural offences.</p> <p>Any person who -</p> <p>(a) has carnal knowledge of any person against the order of nature; [...]</p> <p>(c) permits a male person to have carnal knowledge of him or her against the order of nature,</p> <p>commits an offence and is liable to imprisonment for life.</p> <p>Section 146, Attempt to commit unnatural offences</p> <p>Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years.</p> <p>Section 148, Indecent practices.</p> <p>Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.</p> <p>Section 160, Common nuisance.</p> <p>(1) Any person who does an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common</p>

<sup>195</sup> <https://www.wipo.int/edocs/lexdocs/laws/en/ug/ug008en.pdf>

rights, commits the misdemeanour termed a common nuisance and is liable to imprisonment for one year.

Section 167, *Idle and disorderly persons.*

Any person who -

(a) being a prostitute, behaves in a disorderly or indecent manner in any public place; [...]

(d) publicly conducts himself or herself in a manner likely to cause a breach of the peace;

(e) without lawful excuse, publicly does any indecent act;

(f) in any public place solicits or loiters for immoral purposes; [...]

shall be deemed an idle and disorderly person, and is liable on conviction to imprisonment for three months or to a fine not exceeding three thousand shillings or to both such fine and imprisonment, but in the case of an offence contrary to paragraph (a), (e) or (f) that person is liable to imprisonment for seven years.

Section 168, *Rogues and vagabonds.*

(1) Every -

(a) person convicted of an offence under section 167 after having been previously convicted as an idle and disorderly person; [...]

(d) person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose,

shall be deemed to be a rogue and vagabond, and commits a misdemeanour and is liable for the first offence to imprisonment for six months, and for every subsequent offence to imprisonment for one year.

Section 381, *Personation in general.*

(1) Any person who, with intent to defraud any person, falsely represents himself or herself to be some other person, living or dead, commits a misdemeanour.

[DE FACTO CRIMINALISATION]



Situation

There are no laws in Uganda that *de jure* criminalise trans and gender diverse people. However, in practice transgender and gender diverse people have been indirectly criminalised (*de facto* criminalisation).<sup>196</sup> The criminalisation of consensual same-sex sex and conduct, sex-work, impersonation, public indecency, and public order provisions have been used to subject transgender and gender diverse people to police harassment, arrest, and detention. Transgender and gender diverse people have also reported being arrested without reason.<sup>197</sup>



Examples

**2014**

In 2014 there were several documented cases of the criminalisation of transgender and gender diverse people.

A transgender woman was detained without court hearing for 21 days. She was also denied bail. After her lawyers submitted a complaint to the Ugandan Human Rights Commission, she received a court hearing. She was subsequently charged under section 145 of the Penal Code with

<sup>196</sup> Police practices in Uganda sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>197</sup> The Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation, *Uganda Report of Violations Based on Gender Identity and Sexual Orientation, 2015.* [https://www.outrightinternational.org/sites/default/files/15\\_02\\_22\\_lgbt\\_violations\\_report\\_2015\\_final.pdf](https://www.outrightinternational.org/sites/default/files/15_02_22_lgbt_violations_report_2015_final.pdf); Human Rights Awareness and Promotion Forum, *A Guide to the Normative Legal Framework on the Human Rights of LGBTI Persons in Uganda, 2015,* <https://www.hrapf.org/index.php/resources/legal-policy-analyses/20-15-10-21-hrapf-compilation-on-lgbti-rights-final-design/file>; Human Rights Awareness and Promotion Forum, *Uganda Report of Violations Based on Sexual Orientation and Gender Identity, 2016,* [http://www.hirschfeld-eddy-stiftung.de/fileadmin/images/laenderberichte/Uganda/16\\_10\\_04\\_Uganda\\_Report\\_on\\_LGBTI\\_Violations\\_2016.pdf](http://www.hirschfeld-eddy-stiftung.de/fileadmin/images/laenderberichte/Uganda/16_10_04_Uganda_Report_on_LGBTI_Violations_2016.pdf); Human Rights Awareness and Promotion Forum, *A Quick Scan of the Law affecting the HIV Responses among Transgender persons in Uganda, 2017,* <https://hrapf.org/index.php/resources/legal-policy-analyses/15-quick-scan-on-laws-affecting-transgender-persons2/file>.

carnal knowledge.<sup>198</sup> Another transgender woman was also arrested and prosecuted on the same charge.<sup>199</sup>

A transgender woman was arrested and detained for five days. After her lawyers submitted a complaint to the Inspector General of Police she was brought to Matugga court where was then charged under section 168 of the Penal Code for being a rouge and vagabond.<sup>200</sup>

A transgender man was detained when going to check on a friend who had been arrested for theft at Kiira Road Police Station. At the station they arrested the transgender man claiming that he was a suspect in relation to the theft. Police abused the transgender man. They accused him of being a woman pretending to be a man and of attempting to defraud people.<sup>201</sup>

A transgender woman was arrested and detained as police claimed, "pretending to be a woman caused an inconvenience to the public in the exercise of their rights."<sup>202</sup> She was charged under section 160 of the Penal Code for being a common nuisance.

A transgender woman was arrested under section 381 of the Penal Code for impersonating a woman. After being detained for four days she was brought to court and charged with the differing offence of being rogue and vagabond, under section 168 of the Penal Code. After two weeks she was released on bail. It is not clear whether the prosecution continued or if the charges against her were dropped.<sup>203</sup>

## 2015

In 2015 the reported cases of transgender and gender diverse people being arrested and detained was also high.

A transgender woman was arrested in a bar at Bukoto. After being detained at Kira Road Police Station she was taken to Court where she pleaded guilty to the charge of vagrancy and was sentenced to one month in prison. She reportedly pleaded guilty to avoid long pre-trial detention. The police spokesperson commenting on this case accused transgender people of being criminals and murderers who target foreigners.<sup>204</sup>

A transgender woman was arrested for 'dressing like a woman' and charged with being a public nuisance. She was detained at Katwe Police Station.<sup>205</sup> Another transgender woman was arrested and detained at Kyanjale Police post in Masaka district for the same reasons. However, she was then release after police decided she had not committed a crime by being dressed in the way she was.<sup>206</sup>

In the case of *Uganda v Boaz Kalyeija* a transgender woman was charged with personation under section 381 of the Penal Code. The case was eventually dismissed for want of prosecution.<sup>207</sup>

Two transgender men were arrested after they had become involved in a bar brawl. The transgender men were attacked by other men at the bar and had been accused of being lesbians who were taking their women. Police only arrested the two transgender men and charged them with assault.<sup>208</sup>

<sup>198</sup> The Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation, *Uganda Report of Violations Based on Gender Identity and Sexual Orientation*, 2015, p. 27, case numbers: 01/01/2014 & 02/01/2014.

<sup>199</sup> *Ibid.*, p. 33, case number: 36/05/2014.

<sup>200</sup> *Ibid.*, case number: 03/01/2014.

<sup>201</sup> *Ibid.*, p. 29.

<sup>202</sup> Human Rights Awareness and Promotion Forum, *A Guide to the Normative Legal Framework on the Human Rights of LGBTI Persons in Uganda*, 2015, p. 27.

<sup>203</sup> Human Rights Watch, "Uganda: Anti-Homosexuality Act's Heavy Toll", 14 May 2014, <https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>

<sup>204</sup> Human Rights Awareness and Promotion Forum, *Uganda Report of Violations Based on Sexual Orientation and Gender Identity*, 2016, p. 36 HRAPF/T/3/05/15.

<sup>205</sup> *Ibid.*, p. 29, HRAPF/T/04/11/15.

<sup>206</sup> *Ibid.*, p. 27, HRAPF/T/4/09/15.

<sup>207</sup> Human Rights Awareness and Promotion Forum, *A Guide to the Normative Legal Framework on the Human Rights of LGBTI Persons in Uganda*, 2015, p. 28.

<sup>208</sup> Human Rights Awareness and Promotion Forum, *Uganda Report of Violations Based on Sexual Orientation and Gender Identity*, 2016, p. 35, HRAPF/T/07/10/15.



# Zambia

	<b>Name change</b>	Possible.
	Legislation	National Registration Regulations 254 of 1965, reg. 9.
	Quote/details	The person applies for a new National Registration Card with a statutory declaration or the change of name, and is issued a new card. A separate register of all persons who have so changed their names is kept by the Chief Registrar.
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	Legislation	National Registration Act 19 of 1964 (not trans-specific).
	Documents amended	National Registration Card.
	Conditions for gender marker change	National Registration Act 19 of 1964. <div style="border: 1px solid #ccc; padding: 5px; margin-top: 10px;"> <p>Section 9(2). In any case where a national registration card issued to a registered person ceases in any material particular to accurately represent his identity, such person shall, without undue delay, produce his national registration card and give such particulars as shall be necessary for the issue of a new national registration card to a registrar who... shall issue to such person a new national registration card.<sup>209</sup></p> </div>
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Penal Code Act (as amended by Act No. 15 of 2005). <sup>210</sup>
	Quote/details	<p>Section 146, Person living on earnings of prostitution or persistently soliciting.</p> <p>(1) A person who –</p> <p>(a) knowingly lives wholly or in part on the earnings of prostitution; or</p> <p>(b) in any public place, persistently solicits or importunes for immoral purposes;</p> <p>commits a felony and is liable, upon conviction, to imprisonment for a term not exceeding fifteen years; Provided that a child who commits an offence under subsection is liable to such community service or counseling as the court may determine in the best interests of the child.</p> <p>(2) Where a person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such manner as to show that the person is aiding, [or] abetting [...] the prostitution with any other person, or generally, that person shall, unless the person shall satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.</p> <p>Section 148, Power of search.</p> <p>If it is made to appear to a magistrate, by information on oath, that there is reason to suspect that any house or any part of a house is used by a woman or girl for purposes of prostitution, and that any person residing in or frequenting the house is knowingly living wholly or in part on the earnings of the prostitute, or is exercising control, direction or influence over the movements of the prostitute, the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.</p> <p>Section 149, Brothels.</p>

<sup>209</sup> Ibid., p. 46.

<sup>210</sup> [https://www.unodc.org/res/cld/document/zmb/1931/the\\_penal\\_code\\_act\\_html/Zambia\\_Penal\\_Code\\_Act\\_1930\\_as\\_amended\\_2005.pdf](https://www.unodc.org/res/cld/document/zmb/1931/the_penal_code_act_html/Zambia_Penal_Code_Act_1930_as_amended_2005.pdf)



Any person who keeps a house, room, set of rooms, or place of any kind whatsoever for purposes of prostitution commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and not exceeding twenty five years.

Section 155, Unnatural offences.

Any person who:

(a) has carnal knowledge of any person against the order of nature; or

[...]

(c) permits a male person to have carnal knowledge of him or her against the order of nature;

commits a felony and liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life.

Section 156, Attempt to commit unnatural offences.

Any person who attempts to commit any of the offences specified in section one hundred and fifty-five commits a felony and is liable, upon conviction of not less than seven years but not exceeding fourteen years.

Section 158, Indecent practices between persons of the same sex.

(1) Any male who, whether in public or private, commits any act of gross indecency with a male [...] person, or procures a male [...] person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male [...] person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.

(2) Any female who, whether in public or private, commits any act of gross indecency with a female [...] person, or procures a female [...] person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with himself or with another female [...] person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years. [...]

Section 178, Idle and disorderly persons.

The following persons:

(a) every common prostitute behaving in a disorderly or indecent manner in any public place;

[...]

(e) every person who, without lawful excuse, publicly does any indecent act;

(f) every person who publicly conducts himself in a manner likely to cause a breach of the peace; and

(g) every person who in any public place solicits for immoral purposes;

are deemed idle and disorderly persons, and are liable to imprisonment for one month or to a fine not exceeding sixty penalty units or to both.

Section 181, Rogues and vagabonds.

The following persons:

[...]



(d) every person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose;

shall be deemed to be a rogue and vagabond, and are guilty of a misdemeanour and are liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year.

Section 378, Personation.

(1) Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour.

[DE FACTO CRIMINALISATION]

	<i>Situation</i>	<p>There are no laws in Zambia that <i>de jure</i> criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people have been indirectly criminalised (<i>de facto</i> criminalisation).<sup>211</sup> The criminalisation of consensual same-sex sex and conduct, activities associated to sex-work, impersonation, public indecency, and public order provisions have been used to subject transgender and gender diverse people to harassment, arbitrary arrest and detention.<sup>212</sup></p> <p>People who self-identify or are perceived as transgender or gender diverse are stopped and searched by the police in public areas, especially when this has been initiated by members of the public.<sup>213</sup> Police also perform house raids in search of self-identifying or perceived transgender or gender diverse persons. This also often occurs at the instigation of members of the public.<sup>214</sup></p>
	<i>Examples</i>	<p>In 2014, Whisky Sakala, was arrested and detained “for posing as a woman, dressing in women’s attire, allowing fellow men to buy him [her] beer in a club, and accompanying one to a room’.”<sup>215</sup></p> <p>In 2015, Hatch Bril, a transgender woman, was arrested, prosecuted, and convicted under section 155(c) of the Penal Code for having sex with a cisgender man. Bril was sentenced to 15 years imprisonment.<sup>216</sup></p>

<sup>211</sup> Police practices in Zambia sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>212</sup> Southern Africa Litigation Centre, *Laws and Policies Affecting Transgender Persons in Southern Africa*, 2016, p. 47-48. <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Transgender-Rights-Booklet.pdf>; The Other Foundation, *Canaries in the Coal Mines: An analysis of spaces for LGBTI activism in Zambia*, 2017. [http://theotherfoundation.org/wp-content/uploads/2017/02/Canaries\\_Zambia.pdf](http://theotherfoundation.org/wp-content/uploads/2017/02/Canaries_Zambia.pdf)

<sup>213</sup> South African Trans Forum et al., *Southern Africa Trans Diverse Situational Analysis: Accountability to reduce barriers to accessing health-care*, 2016. <http://www.aidsaccountability.org/wp-content/uploads/2017/02/Trans-SIT-Analysis.pdf>








<sup>214</sup> Ibid.

<sup>215</sup> The Other Foundation, *Canaries in the Coal Mines: An analysis of spaces for LGBTI activism in Zambia*, 2017, p. 9.

<sup>216</sup> Mamba Writer, “Zambian hairdresser faces 15 years jail for sodomy”, Mambaonline, 3 November 2015, <http://www.mambaonline.com/2015/11/03/zambian-hairdresser-faces-15-years-jail-sodomy/>.





# Zimbabwe

	<b>Name change</b>	Possible.
	Legislation	<i>Births and Deaths Registration Act 11 of 1986, s. 18(2).</i>
	Quote/details	The person applies for a new National Registration Card with a statutory declaration or the change of name and is issued a new card. A separate register of all persons who have changed their names is kept by the Chief Registrar.
	<b>Gender marker change</b>	Not possible.
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	<i>Criminal Law (Codification and Reform) Act (2006).<sup>217</sup></i>
	Quote/details	<p><i>Section 46, Criminal nuisance.</i></p> <p><i>Any person who does any of the acts specified in the Third Schedule shall be guilty of criminal nuisance and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or both.</i></p> <p><i>Paragraph 2 Third Schedule, Acts constituting criminal nuisance.</i></p> <p><i>Any person who – [...]</i></p> <p><i>(v) employs any means whatsoever which are likely materially to interfere with the ordinary comfort, convenience, peace or quiet of the public or any section of the public, or does any act which is likely to create a nuisance or obstruction;</i></p> <p><i>shall be guilty of criminal nuisance.</i></p> <p><i>Section 73, Sodomy.</i></p> <p><i>(1) Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both.</i></p> <p><i>(2) Subject to subsection (3),<sup>218</sup> both parties to the performance of an act referred to in subsection (1) may be charged with and convicted of sodomy.</i></p> <p><i>Section 77, Public indecency.</i></p> <p><i>(1) Any person who –</i></p> <p><i>(a) indecently exposes himself or herself or engages in any other indecent conduct which causes offence to any other person in or near a public place, or in or near a private place within the view of such other person. [...]</i></p> <p><i>(2) No person shall be convicted of public indecency unless the words or conduct in question are sufficiently serious to warrant punishment, for which purpose a court shall take into account the following factors in addition to any others that are relevant in the particular case –</i></p> <p><i>(a) the nature of the words or conduct;</i></p> <p><i>(b) the extent to which the words were repeated or the conduct was persisted in, as the case may be;</i></p> <p><i>(c) the age and gender of the person who heard the words or witnessed the conduct;</i></p> <p><i>(d) any previous relationship between the parties;</i></p>

<sup>217</sup> [https://www.unodc.org/res/cld/document/zwe/2006/criminal\\_law\\_codification\\_and\\_reform\\_act\\_html/criminal\\_law\\_codification\\_and\\_reform\\_act.pdf](https://www.unodc.org/res/cld/document/zwe/2006/criminal_law_codification_and_reform_act_html/criminal_law_codification_and_reform_act.pdf)

<sup>218</sup> Subsection 3 deals with sexual intercourse and indecent acts with minors.

		<p>(e) the degree of offence caused to the person who heard the words or witnessed the conduct.</p> <p>Section 81, Soliciting.</p> <p>(1) In this section – “publicly solicits” means –</p> <p>(a) solicits in a public place or any place to which the public or any section of the public have access; or</p> <p>(b) solicits by publication of the solicitation in any printed or electronic medium for reception by the public.</p> <p>(2) Any person who publicly solicits another person for the purposes of prostitution shall be guilty of soliciting and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or both.</p> <p>Section 136, Fraud.</p> <p>Any person who makes a misrepresentation –</p> <p>(a) intending to deceive another person or realising that there is a real risk or possibility of deceiving another person; and</p> <p>(b) intending to cause another person to act upon the misrepresentation to his or her prejudice, or realising that there is a real risk or possibility that another person may act upon the misrepresentation to his or her prejudice;</p> <p>shall be guilty of fraud if the misrepresentation causes prejudice to another person or creates a real risk or possibility that another person might be prejudiced, and be liable to –</p> <p>(i) a fine not exceeding level fourteen or not exceeding twice the value of any property obtained by him or her as a result of the crime, whichever is the greater; or</p> <p>(ii) imprisonment for a period not exceeding thirty-five years; or both.</p>
[DE FACTO CRIMINALISATION]		
	<p><b>Situation</b></p>	<p>Zimbabwean law does not directly criminalise transgender and gender diverse people. However, in practice transgender and gender diverse people are indirectly criminalised (<i>de facto</i> criminalisation).<sup>219</sup> The criminalisation of adult consensual same-sex sex, soliciting for the purpose of sex work, fraud, and public order laws are used to subject transgender and gender diverse people to harassment and arbitrary arrest and detention.<sup>220</sup> Individuals are often arrested, detained and subsequently released without charge.<sup>221</sup></p>
	<p><b>Examples</b></p>	<p>In 2014, Ricky Nathanson, a transgender activist, was arrested in Bulawayo after entering a female toilet. At the police station she was forced to strip, and she was also examined by medical doctors to “verify her gender”. After spending two nights in a holding cell, she was charged with criminal nuisance. In court Ricky was subsequently acquitted of the charge because use of a public bathroom was not a listed offence.<sup>222</sup></p> <p>In 2015, Zimbabwe hosted the International Conference on AIDS and STIs in Africa (ICASA 2015). Transgender and gender diverse delegates from around the world came to participate in the event. Many of them reported experiencing unlawful detentions at the main entry points into the country. One transgender woman was held at Beitbridge for an hour<sup>223</sup> as immigration officials ‘verified’ her documentation which reflected her dead name and identity.<sup>224</sup></p>

<sup>219</sup> Zimbabwean police practices consistently sanction transgender and gender diverse people using legal provisions that are not on the face of them directly discriminatory towards transgender and gender diverse people.

<sup>220</sup> The Other Foundation, *Canaries in the Coal Mines: An analysis of spaces for LGBTI activism in Zimbabwe*, 2017; Africa Litigation Centre, *Laws and Policies Affecting Transgender Persons in Southern Africa*, 2016, p. 50-51.

<sup>221</sup> GALZ, *Actus Reus: An analysis of human rights violations against LGBTI persons in Zimbabwe*, 2018, [http://galz.org/wp-content/uploads/2018/08/Violations-Report\\_Print\\_Final-1-1.pdf](http://galz.org/wp-content/uploads/2018/08/Violations-Report_Print_Final-1-1.pdf).

<sup>222</sup> Ricky Nathanson, *The Use of Criminal Law in Zimbabwe to Inhibit Civic Participation by Transpeople*, 2018, <https://www.southernafricalitigationcentre.org/wp-content/uploads/2019/03/Nathanson-article.pdf>

<sup>223</sup> GALZ, *TIRZ W Case Report 004/2015 (Unreported Interview)*, 2015.

<sup>224</sup> A dead name and identity refer to a person’s previous gender/ name/ identity prior to taking steps to affirm their gender.

# Asia

by Zhan Chiam

When the first *Trans Legal Mapping Report* came into being in 2016, there was much optimism in Asia, which saw an upswing of positive judicial cases and legislative changes in legal gender recognition, giving hope to trans communities all over the region. This was confirmed in 2017 with countries like **Pakistan, Nepal, Vietnam** and **Kyrgyzstan** moving forward in either discussing Bills which would allow trans persons to finally change their legal gender markers, or be able to do so with less prohibitive requirements.

In this edition in 2019, the picture is much less rosy than one could have anticipated. I am sorry to document that in countries in all the different Asian sub-regions (Central, West, South, Southeast and East), there have been regressions or progress has stalled.

**Bangladesh** offers a glimmer of hope, when in January 2019 *hijras* were able to vote under a third gender category in the national voters list. The only country which has had real progress is **Pakistan**, where the *Transgender Rights Bill* under review in 2017 has now passed and which ostensibly allows gender marker change without prohibitive requirements, in the form of the *Transgender Persons (Protection of Rights) Act 2018*. Civil society reports difficulties for trans masculine people and those with unconventional gender presentations to access gender marker change through a self-determination process. However, the advancements achieved by the Act are undeniable. It is, however, noteworthy that despite this firm step forward, and the appointment of a trans person to the Ministry of Human Rights in 2019,<sup>225</sup> Pakistan continued to strongly oppose the renewal of the mandate of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, voting against it in June 2019 at the UN Human Rights Council.<sup>226</sup>

In Central Asia, trans activists work tirelessly despite conservative societies and governments which inhibit rights for trans persons. In **Kazakhstan**, the Parliament is currently proposing an amendment to a draft health Code which would increase the age limit from 18 to 21 for a trans person to obtain legal gender recognition and other human rights, including access to trans-specific healthcare.<sup>227</sup> As outlined below, the current process for trans persons to change their gender marker and access health services in Kazakhstan is already onerous, lengthy and expensive, and this restriction, without involving civil society consultation, would further deepen discrimination against trans people. In **Turkmenistan** and **Uzbekistan**, the conflation of gender identity with sexual orientation means that trans people, mostly trans women, who seek gender marker change are arrested under a law that prohibits male homosexuality.

Meanwhile in **India, Japan, Mongolia, Nepal** and **Singapore**, the right to legal gender recognition could be on the verge of being pared back (in the case of India and Nepal), stringent surgical requirements which were previously applied discretionally have been fortified with the strict need for “full” gender reassignment/transition (in the case of Mongolia and Singapore), or the requirement for sterilisation was confirmed through a superior court decision (in the case of Japan).

<sup>225</sup> See: <https://www.gendergp.com/blog-pakistan-takes-positive-steps-towards-the-inclusion-of-trans-people/>

<sup>226</sup> Pakistan was also part of the Organization of Islamic Cooperation (except Albania and Tunisia) at the Human Rights Council which vocally opposed the mandate, including introducing 10 “hostile amendments” during the voting process with the aim of weakening the mandate. For detailed analysis, see ARC International, ILGA World and International Service for Human Rights, “Compilation of the Adoption of the 2019 SOGI Resolution 41/18”: <https://ilga.org/RenewIESOGI-report-process>

<sup>227</sup> TGEU, ILGA Europe and IGLYO, “Joint call on Parliament of Kazakhstan”, 10 June 2020: <http://tgeu.org/joint-call-on-parliament-of-kazakhstan/>

**Vietnam**, which in 2017 was on the verge of a significant breakthrough in the Southeast Asian region in allowing legal gender recognition at all, has stalled in a lengthy 6-step law-making process in which the law still has not yet passed.

As the examples from **Iran, Kuwait** and **Lebanon** in West Asia show, the lack of legal gender recognition in a real and meaningful way leads to immense sexual and physical violence against trans people, often at the hands of police and then supported by state structures such as courts and parliamentarians. Where legal gender recognition exists, violence and discrimination against trans persons does not disappear, as seen in the examples of *de facto* criminalisation in **South Korea** and other countries around the world. However, a self-determination model signals to trans persons that there is some measure of recognition and protection by the state, and that they can move more freely in society to some extent, less afraid of having incongruent identity documents.






The Asian regions continue to have enormous income and development disparities, and the ever-increasing economic and political might of **China** is felt across the whole continent, but especially by its bordering neighbours and in **Hong Kong** and **Taiwan**. On the one hand, it may seem that trans people changing their names and gender markers, or being arrested and detained, are peripheral problems unrelated to hefty global issues such as COVID-19, climate change struggles, countries under economic collapse, deepening humanitarian crises, and an impending global recession.

Maybe they are.

However, these are times of increased political conservatism, when one has become more and more desensitised to far-fetched statements and the irresponsible action of leaders. What then is one more murdered trans woman, or a street sex worker raped and abandoned who no one knows the name of? As we all know, it is when our movements and allies are fighting other fires, tired and under-resourced, that is exactly the moment to take back our rights.



# Bangladesh

	<b>Name change</b>	Possible.
	<i>Quote/details</i>	Name change is applied for by affidavit witnessed by a magistrate, which must be published in two newspapers.  It is then possible to change the national ID. <sup>228</sup>
	<b>Gender marker change</b>	Nominally possible.
	<i>Third gender option</i>	Recognition of third gender or hijra status was announced by Prime Minister Sheikh Hasina and the government on January 26, 2014 (“The Government of Bangladesh has recognized the Hijra community of Bangladesh as a Hijra sex”). <sup>229</sup>  However, no procedures for gender marker change have been put forward.
	<i>Conditions for gender marker change</i>	An ‘other’ gender marker is available on passport forms, but supporting documentation of a birth certificate or a national ID card is required when issuing a passport.  At present, neither of those documents can carry an ‘other’ marker, meaning that uncertainty exists over the success of potential passport applications. <sup>230</sup> In Bangladesh hijras can access the ‘other’ gender marker category whereas non-hijra trans persons (e.g. trans men) cannot. In January 2019, hijras were able to register to vote under the “other” category through a “third gender” category in the national voters list.

<sup>228</sup> See: [http://www.nidw.gov.bd/index.php?option=com\\_content&view=article&id=148&Itemid=1215&lang=en](http://www.nidw.gov.bd/index.php?option=com_content&view=article&id=148&Itemid=1215&lang=en).

<sup>229</sup> Human Rights Watch, “I want to live with my head held high”: Abuse in Bangladesh’s Legal Recognition of Hijras, 2016, [https://www.hrw.org/sites/default/files/report\\_pdf/bangladesh1216\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/bangladesh1216_web.pdf).

<sup>230</sup> United Nations Development Programme and Asia Pacific Transgender Network, *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*, 2017 [https://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic\\_governance/hiv\\_aids/legal-gender-recognition--a-multi-country-legal-and-policy-revie.html](https://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/legal-gender-recognition--a-multi-country-legal-and-policy-revie.html)



# Bhutan

	<b>Name change</b>	Possible.
	<i>Quote/details</i>	Form to be submitted to the Department of Civil Registration and Census. <sup>231</sup>
	<b>Gender marker change</b>	Possible, through an informal procedure.
	<i>Documents amended</i>	Citizenship identity card (all other identity documents follow from this, including passport and voter identity card).
	<i>Conditions for gender marker change</i>	Although Bhutan does not have a legislative process for gender marker change, civil society reports that it is possible by submitting (1) a psychiatrist's certificate confirming a person's gender dysphoria, and (2) a supporting letter from a civil society organisation. One trans person received a supporting letter from their local administration, which was also accepted. <sup>232</sup>

<sup>231</sup> See: [https://www.citizenservices.gov.bt/dob\\_correction](https://www.citizenservices.gov.bt/dob_correction).

<sup>232</sup> Source: Tashi Tsheten, Rainbow Bhutan.





# Hong Kong

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

	<b>Name change</b>	Possible. By deed poll.
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	<b>Authority</b>	Administrative process.
	<b>Quote/details</b>	<p><b>Note:</b> <i>As at the time of this publication, Hong Kong is undergoing a review of its legal gender recognition process.</i></p> <p>The Inter-departmental Working Group on Gender Recognition however maintains a stricter view that the sex entry on the HKIC is an issue of identification rather than legal status. It says:</p> <p><i>There is currently no legislation in Hong Kong which provides for the recognition of the reassigned, acquired or preferred gender of a person for all legal purposes. Government departments and private bodies are not required by law to accept the sex entry on a person's HKIC as that person's legal gender. Neither is there any mechanism to have the sex entry on a person's birth certificate amended to reflect his or her reassigned, acquired or preferred gender.<sup>233</sup></i></p> <p>However civil society<sup>234</sup> has commented that the birth certificate is not used in most situations. For practical purposes, the HKIC is widely used in Hong Kong as an identification document, and holders are required under law to carry it at all times.</p>
	<b>Documents amended</b>	Hong Kong Identity Card (HKIC), passport.
	<b>Conditions for gender marker change</b>	<p>The Identity Card holder who applies to effect a change to his/her gender is required to produce a medical certificate which indicates that they have “completed sexual reassignment surgery (SRS)” according to the Immigration Department's administrative guidelines for considering applications to change the sex entries on HKICs<sup>235</sup>:</p> <p><i>Generally speaking, persons who have received different forms of treatments by professional psychiatrists and clinical psychologists, including psychotherapy, hormonal treatment and real-life experience of the chosen gender role for a period of time may be recommended for sex re-assignment surgery (SRS).</i></p> <p>The guidelines further require submission of documents proving completion of SRS, which show removal of the uterus and ovaries or penis and testes, and construction of a penis or some form of a penis, or construction of a vagina. For those who have had SRS performed outside of Hong Kong, medical proof from that doctor should be provided, or a Hong Kong registered doctor should give an assessment of the SRS performed. Since 2016, the Immigration Department has added these additional qualifying criteria:</p> <ul style="list-style-type: none"> <li>▪ That other forms of medical proof may also be accepted when the relevant information is contained; and</li> <li>▪ consideration will be given having regard to the particular circumstances of the case.<sup>236</sup></li> </ul>

<sup>233</sup> Inter-departmental Working Group on Gender Recognition, *Consultation Paper: Part 1, Gender Recognition Executive Summary*, 2017, at [6]. <http://www.iwgr.gov.hk/eng/pdf/eSummary.pdf>

<sup>234</sup> Joanne Leung, Chairperson, Transgender Resource Center.

<sup>235</sup> [http://www.immd.gov.hk/eng/faq/faq\\_hkic.html](http://www.immd.gov.hk/eng/faq/faq_hkic.html).

<sup>236</sup> Civil society (Transgender Resource Center and other) have confirmed there is no change to the process (as of 2019).




# India

	<b>Name change</b>	Possible, as part of gender marker change process.
	<b>Gender marker change</b>	Possible.
	<i>Legislation</i>	<i>Transgender Persons (Protection of Rights) Act 2019.</i>
	<i>Conditions for gender marker change</i>	<p>Applications must be made to the District Magistrate, who can issue a certificate of transgender status and update all documents, including change of name, under the <i>Transgender Persons (Protection of Rights) Act 2019</i>: sections 5-6. However, identification as 'male' or 'female' can only be issued once proof of gender confirmation surgery is shown to the Magistrate: section 7.</p> <p>As of January 2020, the <i>Transgender Persons (Protection of Rights) Act 2019</i> is under challenge in the Indian Supreme Court, as it is alleged that the Act is unconstitutional with reference to the Supreme Court's decision in <i>NALSA v Union of India</i> (2014). As of June 2020, a second petition alleging unconstitutionality has been entered, and will be heard along with the first.</p>



# Indonesia

	<b>Name change</b>	Possible, though difficult to access.
	<i>Quote/details</i>	By court order, which allows one to change core documents such as identity card, health card, driver's license, etc. The birth certificate will have the new name recorded, with the birth name still visible. School certificates cannot be changed—the court order has to be used together with the certificates to prove identity when certificates are required.
	<b>Gender marker change</b>	Possible, with prohibitive requirements and difficult to access. <sup>237</sup>
	<i>Authority</i>	Court order. A positive court order is followed by civil registration. See <i>Indonesian Act No. 23 year 2006 on Population Administration</i> , Article 56(1) and <i>Indonesian Presidential Decree no.25 year 2008 on Requirements and Procedures for Registration of Population and Civil Registration</i> , article 97(2).  Both the Act and Decree do not specifically explain the terms of gender marker change.
	<i>Documents amended</i>	Identity Card and subsequent documents; birth certificate sometimes possible.
	<i>Conditions for gender marker change</i>	<p>Indonesia does not have specific gender recognition laws, but a district court may allow a “change of sex” under population administration provisions for registering “other important events”. That court decision can be submitted as evidence to change sex details on an identification card and birth certificate.</p> <p>There are no clear legal requirements for when a judge should or should not recognise a ‘change of sex’. In practice, the court may ask family members to give evidence. If the court grants the request, this positive decision is submitted, along with the transgender person’s national ID card and their Family Card,<sup>238</sup> in their application to amend their sex details.<sup>239</sup></p> <p>According to the UNDP-APTN report:</p> <div style="border: 1px solid #ccc; padding: 10px; margin-top: 10px;"> <p><i>There are no laws, regulations or binding court decisions that can confirm whether or not transgender people have to undertake gender affirming medical steps in order to change their gender markers. Expert witness or testimony is not legally required as part of the petition to the court. However, in practice it is common that judges summon or ask for expert testimony, because it is recognized as ‘legal evidence’ in the Indonesian legal system. This is also based on the persuasive, but not binding, precedent in the 1973 Vivian Rubianti case where a transgender woman was able to obtain a change to her gender marker after gender affirming surgeries.</i></p> </div>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Legislation</i>	<i>Qanun 11/2002</i>
	<i>Quote/details</i>	Among five laws enacted between 2002 and 2004 that criminalise violations of Sharia law and contain Islamic dress requirements. <sup>240</sup>  [DE JURE CRIMINALISATION]
	<i>Situation</i>	According to the Human Dignity Trust:

<sup>237</sup> Source: Mario Prajna Pratama, Transition Collective, who confirms that there have been no updates to legal gender recognition processes at time of print of this report.

<sup>238</sup> This document is typically held by a senior family member who may refuse to provide it for this purpose.

<sup>239</sup> UNDP-APTN report, 2017.

<sup>240</sup> Source: Human Dignity Trust, *Injustice Exposed*.

*Trans people in Indonesia are also targeted on the basis of their gender expression and identity; notably under Qanun 11/2002, which is among five laws enacted between 2002 and 2004 that criminalise violations of Sharia law and contain Islamic dress requirements. Transgender women have been singled out under these provisions. In 2010, the head of the Wilayatul Hisbah (the Islamic religious police force in Aceh) broadcasted his view on transgender women stating, "we consider them men, and they should dress accordingly". The city of Pariaman passed a broadly-framed regulation in November 2018 banning "acts that are considered LGBT". In remarking on the new law, the head of the local legislature stated that "same-sex LGBT and transgender people will be subject to sanctions and fines if they disturb the public order."<sup>241</sup>*

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<sup>241</sup> Source: Human Dignity Trust, *Injustice Exposed*, p. 55.



# Iran

	<b>Name change</b>	Possible, with prohibitive requirements. <i>See gender marker change process.</i>
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	<b>Quote/details</b>	Following a fatwa issued by Ayatollah Khomeini in the 80s, s.18 of Art. 4 of <i>The Family Law</i> now states that decisions regarding “sex reassignment” are within the purview of the Family Court. <sup>242</sup> The judiciary’s Legal Department issued an advisory opinion clarifying the legal process in <i>Opinion number 4/8/92-1444/92/7</i> .
	<b>Conditions for gender marker change</b>	<p>Only trans people who undergo sex reassignment surgery (SRS) can access legal gender recognition. The person has to apply to a Family Court to be approved for SRS, and the referred to the Legal Medical Organization where an examination is performed, and a medical opinion issued. They then return to the court where a permit for SRS is issued.</p> <p>A certified testimonial of the person’s parents is also needed for any individual (including adults) wishing to have SRS. The testimonial must say that the parents accept and approve of the surgery(s).<sup>243</sup></p> <p>After completing SRS, the person returns to the court with such proof and a petition to the National Organization for Civil Registration to amend their national ID to reflect their new name and gender. If approved, the court then issues an order for the NOCR to update and reissue the person’s official records.<sup>244</sup></p>
	<b>Laws used against transgender and gender diverse people</b>	
	<b>Legislation</b>	<i>Islamic Penal Code, Article 638</i>
	<b>Situation</b>	<p>Civil society<sup>245</sup> reports that transgender gender expressions, including so-called “cross-dressing”, could attract a punishment of flogging (74 lashes) under the broad and vaguely worded Article 638 of the Islamic Penal Code.</p> <p>They also report that the Iranian police, paramilitary basij forces and other public officials use the Penal Code to harass, abuse and detain individuals due to their “religiously inappropriate clothing or appearance”. Article 638 allows for the punishment of women and girls who fail to cover their head or wear loose-fitting outfits in public spaces. This provision has had a particularly severe impact on lesbians and transgender men who do not conform to stereotypical models of femininity, and wish, for example, to cut their hair short, discard compulsory headscarves, or wear items of clothing stereotypically associated with men. The law places these groups at constant risk of criminalisation and penalisation. They may be punished with cash fines, imprisonment, or be flogged if sentenced to so-called “cross-dressing” under the Penal Code which prohibits conduct deemed “religiously forbidden” (haram) or otherwise “offensive to public morals” (Article 638).</p> <p>Similarly, people with male gender markers (whether they are trans-identified or not) who wear make-up and display expressions and behaviours stereotypically regarded as feminine are at risk of being targeted for arbitrary arrest and detention, and torture and other ill-treatment, including sexual violence and rape.</p> <p>This is closely linked with Iran’s legal gender recognition procedure, which mandates that individuals obtain a diagnosis of “Gender Identity</p>

<sup>242</sup> OutRight Action International, *Human Rights Report: Being Transgender in Iran*, 2016, p. 8.

<sup>243</sup> Source: 6Rang.org (Iranian Lesbian and Transgender Network) confirmed this update and information was current at time of this report.

<sup>244</sup> *Ibid.*, pp. 8-10. See page 9 for flowchart of process.

<sup>245</sup> Source: 6Rang.org, 2019. See also their submission to submission to the UN Committee on the Rights of Persons with Disabilities.

Disorder” and pursue hormone therapy and sterilization before they discard the veil (in the case of women) and adopt modes of dress that are stereotypically associated with members of the opposite sex.

There is evidence that the court system is weighted against trans hate crime perpetrators, including murders. In one case, a trans woman was murdered by her male family members in Shadegan City in January 2019. The judge has already released most of the accused on bail (except one) because of a lack of private plaintiffs. In 2017, a private party was raided and 23 trans persons arrested, ill-treated and interrogated for attending a haram event.<sup>246</sup>

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<sup>246</sup> 6Rang, *Submission to the UN Universal Periodic Review 34th session of the UPR Working Group – Islamic Republic of Iran*, 2019 at [24].



## Iraq

	<b>Name change</b>	Possible. <sup>247</sup>
	<b>Gender marker change</b>	Not possible. <sup>248</sup>
	<i>Situation</i>	Unclear if it is possible to change a name to one commonly used by the “opposite” sex. <sup>249</sup>

<sup>247</sup> Source: IraQueer.

<sup>248</sup> MADRE, IraQueer, OutRight Action International and The Organization of Women’s Freedom in Iraq, “Violence and Discrimination Based on Sexual Orientation and Gender Identity in Iraq a Report for the United Nations Committee on the Elimination of Discrimination against Women”, September 2019: <https://www.iraqueer.org/reports-and-submissions.html>

<sup>249</sup> Source: IraQueer.



# Japan

	<b>Name change</b>	Possible.
	Legislation	Family Registry Act, Article 107-2.
	Quote/details	<p data-bbox="616 461 735 483">Article 107-2.</p> <p data-bbox="616 495 1254 544"><i>A person who wishes to change his/her given name on justifiable grounds shall submit a notification to that effect, with the permission of the family court.</i></p> <p data-bbox="595 568 1267 696">Trans persons can apply with (1) Gender Identity Disorder diagnosis (medical certificate is required) or (2) proof that one has lived with and used the name one identifies with for a certain amount of period in one's daily life. For persons 14 years or younger, a guardian should apply on their behalf.</p>
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	Legislation	Act on Special Cases in Handling Gender for People with Gender Identity Disorder ("Gender Identity Disorder Act"), Law No.111 of 2003 (trans-specific).
	Documents amended	Family Register.
	Conditions for gender marker change	<p data-bbox="595 983 1254 1084">The applicant must: 1. Be diagnosed with Gender Identity Disorder by two physicians; 2. Be over 20 years old; 3. Be unmarried; 4. Have no minor children; 5. Be sterilised; 6. Have completed genital surgery (Sex Reassignment Surgery).</p> <p data-bbox="595 1099 1267 1252">In January 2019, the Supreme Court<sup>250</sup> found that the law was not unconstitutional, and therefore confirmed that sterilisation was required for gender marker change. However, in discussing one aspect of the appellant's claim, Article 13 of the Constitution (respect for all people as individuals, including the right to the pursuit of happiness),<sup>251</sup> the Court said that:</p> <div data-bbox="616 1272 1267 1424" style="border: 1px solid #ccc; padding: 5px;"> <p data-bbox="616 1279 1238 1417"><i>(T)he struggles of people with Gender Identity Disorder is an issue for our society which should embrace diversity of gender identities. In that sense, we hope that understanding towards various issues around people with Gender Identity Disorder, including this case, will widely deepen, and appropriate measures in different areas will be taken from the perspective of respecting individuals' personalities and characters.</i><sup>252</sup></p> </div>

<sup>250</sup> For detailed analysis see Colin James, The Japan Times, "The Supreme Court hews to the letter of the law on gender identity while laying the groundwork for future challenges", 6 February 2019: <https://www.japantimes.co.jp/community/2019/02/06/issues/supreme-court-hews-letter-law-gender-identity-laying-groundwork-future-challenges/#.XruBVGgzY2x>. See also Kyle Knight, Human Rights Watch, "A Silver Lining in Japan's Supreme Court Transgender Ruling", 1 March 2019: <https://www.hrw.org/news/2019/03/01/silver-lining-japans-supreme-court-transgender-ruling>

<sup>251</sup> The Constitution of Japan, Article 13: [https://japan.kantei.go.jp/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html)

<sup>252</sup> Source: Azusa Yamashita (Hirosaki University and Iwate Rainbow Network).





## Jordan



### Laws used against transgender and gender diverse people



#### Legislation

Penal Code 1960.<sup>253</sup>



#### Quote/details

##### Article 307.

*Any male who is disguised in a female's dress and enters a place reserved for women only or which cannot be entered by other than women at the time of committing the act; he shall be punished by imprisonment for a period not to exceed six months.*

[DE JURE CRIMINALISATION]

<sup>253</sup> Source: Human Dignity Trust, *Injustice Exposed*; Jordan Penal Code (No. 16 of 1960) – English translation: [http://www.ahtnc.org.jo/sites/default/files/penal\\_code.pdf](http://www.ahtnc.org.jo/sites/default/files/penal_code.pdf)



# Kazakhstan

	<b>Name change</b>	Possible, with restrictive requirements.
	Legislation	Kazakhstan Family Code, Chapter 30, Article 257, Subsection 13
	Quote/details	The Kazakhstan Family Code allows change of first, patronymic and last name for reasons that are “justifiable” and for anyone aged 16 years and older. Such reasons include “dissonance of first name, patronymic, last name” and “difficulty of pronunciation.” But name changes based on a transgender person’s “wish to have first name, patronymic, last name that are consistent with the chosen gender” are allowed only “in case of transsexual surgery.”
	<b>Gender marker change</b>	Possible, with restrictive requirements.
	Legislation	Kazakhstan Health Code, Article 88.  Decree 187 by Minister of Health and Social Development, “Medical Certification and Sex Reassignment Procedure for Persons with Sexual Identification Disorders” (31 March 2015)
	Quote/details	<p>Article 88, § 3.</p> <p><i>People with gender identity disorders, except for those with mental disorders (diseases) shall have the right to change their sex. The rules of medical examination and sex change operations for persons with gender identity disorders shall be established by the Government of the Republic of Kazakhstan.</i></p>
	<b>Conditions for gender marker change</b>	<p>Trans persons file an application with a local psychiatric institution and first undergo various psychiatric and physical tests at that institution. They are referred to a Commission for Medical Certification of Persons with Sexual Identification Disorders which comprises of at least three psychiatrists and other specialists, who decide whether the person is allowed to begin hormone therapy.</p> <p>The process as set out in Decree 187 is:</p> <div data-bbox="603 1240 1267 1599" style="border: 1px solid gray; padding: 5px;"> <p><i>If the person is allowed to proceed in the process, he or she undergoes hormone therapy at a medical institution. At the same time, the person must participate in follow-up care at the psychiatric institution, including “medical and social support” and an “assessment of mental state.” After the hormone treatment stage, the transgender person must go before the Commission a second time, for a decision on whether or not the person is eligible for gender reassignment surgery. A positive decision leads to surgery at an approved medical institution, where a person is surgically sterilized and either male or female genitalia are formed to match the transgender person’s gender identity. Following the gender reassignment surgery, the Commission meets again to decide whether or not the transgender person will be able to change his or her assigned gender. If the Commission allows the change, the person must then undergo a year-long social and psychological “rehabilitation course,” conducted by psychiatric institution “specialists.”<sup>254</sup></i></p> </div> <p>Unlike other health services, gender marker change is not covered by the state for citizens and is prohibitively expensive.<sup>255</sup></p> <p>As at June 2020, the Parliament is proposing amendment No. 539 to Article 156 “Change of sex” in the draft “Code on the health of the people and the healthcare system.” The proposed amendment will increase the existing age limit for gender marker change from 18 to 21. If passed, this will also impact trans persons between 18 to 21 from accessing trans-related healthcare.<sup>256</sup></p>








<sup>254</sup> ALMA-TQ, Center for International Human Rights of Northwestern Pritzker School of Law and Heartland Alliance, *Violations by Kazakhstan of the Right of Transgender Persons to Legal Recognition of Gender Identity* – submitted for consideration at the 117th Session of the Human Rights Committee, June 2016:  
[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT\\_CCPR\\_CSS\\_KAZ\\_24305\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_CSS_KAZ_24305_E.pdf)

<sup>255</sup> Ibid.

<sup>256</sup> TGEU, ILGA Europe and IGLYO, “Joint call on Parliament of Kazakhstan”, 10 June 2020.



# Kuwait

	<b>Name change</b>	Possible, not trans-specific.
	<b>Gender marker change</b>	Not possible.
	<i>Situation</i>	Although there was a landmark lower court case in 2004 where a trans woman, who had undergone “complete sex reassignment surgery” in Thailand, was allowed to change her legal documents from male to female, the decision was overruled based on a government appeal supported by Islamist lawyers and the woman’s father who told the court that she “brought shame to his family.” <sup>257</sup> Since then, Article 198 of the Kuwaiti Penal Code was amended in 2007 to include in the offence imitating the opposite sex (see below). In 2010, Islamist Parliamentarians proposed a bill which would introduce a ban on legal gender recognition. This bill has not yet passed. <sup>258</sup>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Legislation</i>	<i>Penal Code, No. 16 of 1960.</i>
	<i>Quote/details</i>	<p><i>Article 198.</i></p> <p><i>Whoever makes a lewd signal or act in a public place or such that one may see it or hear it from public place, or appears like the opposite sex in any way, shall be punished for a period not exceeding one year and a fine not exceeding 1000 Dinar or one either of these punishments.</i><sup>259</sup></p> <p>[DE JURE CRIMINALISATION]</p>
	<i>Situation</i>	<p>All Kuwaiti trans persons, or those with “questionable” gender expressions, are criminalised under Article 198 regardless of their medical transition and there are many reports of trans women especially being targeted by police for subjective interpretations of this law. Cis gender men are also targeted under this law, although there is also a parallel and harsher law on consensual sex between men.<sup>260</sup> Trans men are less frequently arrested under Article 198 which, according to the community is because police fear accusations of sexually harassing women, something which is taken very seriously in Kuwait.<sup>261</sup></p> <p>A thorough Human Rights Watch report documents frequent sexual harassment, rape and sexual violence, physical beatings, and detention by the police of trans women, often on threat of arrest under Article 198. Bidun/bidoon, or a stateless Arab minority in Kuwait, are classified as illegal residents.<sup>262</sup> Trans women who are bidun therefore face more intense police abuse and humiliation, with one reporting repeated beatings and periods of disappearance and detention.<sup>263</sup></p> <p>These occur despite prohibitions to torture under Articles 53, 159 and 184 of the Criminal Code and Kuwait ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>264</sup></p>

<sup>257</sup> Human Rights Watch, “They Hunt Us Down for Fun” *Discrimination and Police Violence Against Transgender Women in Kuwait*, 2012, p. 17: <https://www.hrw.org/sites/default/files/reports/kuwait0112ForUpload.pdf>

<sup>258</sup> *Ibid.*, p. 13.

<sup>259</sup> Human Dignity Trust, Kuwait: <https://www.humandignitytrust.org/country-profile/kuwait/>

<sup>260</sup> *Penal Code, No. 16 of 1960*, Article 193, for which the penalty is up to 7 years imprisonment.

<sup>261</sup> Human Rights Watch, p. 3.

<sup>262</sup> Minority Rights Group, Kuwait: <https://minorityrights.org/minorities/bidoon/>

<sup>263</sup> Human Rights Watch, pp. 28-31.

<sup>264</sup> *Ibid.*



# Kyrgyzstan

	<b>Name change</b>	Possible. See gender marker change conditions.
	<b>Gender marker change</b>	Possible.
	<i>Authority</i>	Legislation (not trans-specific), policy. <i>Law on Acts of Civil Status (2005)</i> . <sup>265</sup>
	<i>Quote/details</i>	<p>Article 72. Conclusion of a registry body of acts of civil status about adding corrections or changes to the statement of the act of civil status. Conclusion about adding changes or corrections to the statement of the act of civil status is prepared by the registry body in the following cases:</p> <p>- if a document of authorized format about change of sex issued by a medical organization has been submitted.<sup>266</sup></p> <p>Instruction on the rules of registration of acts of civil status approved by the Order of the State Registration Service under the Government of Kyrgyz Republic of 21 July 2011:</p> <p><i>Change and amendments to civil registries are made when it is needed to "change name, patronymic and surname due to change of sex (of hermaphrodites) upon a statement issued by medical institution that performed change of sex" (Article 155).</i><sup>267</sup></p>
	<i>Documents amended</i>	<p>Birth certificate, identity card*, passport, pension insurance documents, military registration card, diploma, driver's license.</p> <p>*The first digit of every identity card in Kyrgyzstan is either 1 or 2 and denotes if the holder is a male or female person. Even after legal gender recognition, the first digits are not changed and remain the same as that of the person's birth gender.<sup>268</sup></p>
	<i>Conditions for gender marker change</i>	<p>Before 2017, civil registry offices usually required medical certificates confirming a diagnosis of "transsexualism" and surgery for change of gender marker and name.</p> <p>From 2017, as a result of a multi-year trans advocacy campaign led by LGBT organization, Labrys Kyrgyzstan, and partners, it is now possible to change the legal gender without surgical interventions. The process of legal gender recognition without bodily modification requirements was reinforced by the creation of a Manual on provision of medical and social care for transgender, transsexual and gender nonconforming people<sup>269</sup> which is the national standard of medical and social care, and which was approved by the Kyrgyz Republic Ministry of Healthcare in Decree № 42 on 18 January 2017.</p> <p>Exceptions are:</p> <ul style="list-style-type: none"> <li>▪ contraindications for gender marker change based on the exception criteria of the valid version of the ICD</li> <li>▪ those under 18 years of age, except when official representatives present a notarized agreement)</li> </ul> <p>Practically there are already feedbacks from several transgender people who are in process of documents changing on the basis of a certificate with transsexualism diagnosis given by appropriate institute.</p>

<sup>265</sup> Text of the legislation available in Russian: [http://www.srs.kg/index.php?option=com\\_content&view=article&id=55:-12-2005-n-60&catid=5:2010-06-10-09-19-55&Itemid=47](http://www.srs.kg/index.php?option=com_content&view=article&id=55:-12-2005-n-60&catid=5:2010-06-10-09-19-55&Itemid=47) (accessed 16 October 2010)

<sup>266</sup> <http://cbd.minjust.gov.kg/act/view/ru-ru/1655?cl=ru-ru>

<sup>267</sup> Due to a lack of differentiation between gender identity and sex characteristics, rules are understood and applied interchangeably between the two.

<sup>268</sup> Source: Sanjar Kurmanov, TGEU.

<sup>269</sup> <http://www.labrys.kg/ru/library/full/27.html>



# Lebanon

	<b>Name change</b>	Possible. See gender marker change process.
	<b>Gender marker change</b>	Possible, with unclear requirements.
	<b>Authority</b>	Court application. According to Decree N.8837, Article 21 (adopted 15 January 1932), changes in the civil registry (except for certain changes) can only be made after a court ruling.
	<b>Conditions for gender marker change</b>	<p>Each case is decided individually by the presiding magistrate, with unclear requirements.</p> <p>In all previous cases, the courts have required proof of a “physical, social and psychological nature” and “proof of the irrevocability of the sex/gender conversion and of psychological and social necessities justifying the need of legal recognition.”<sup>270</sup></p> <p>Thus far this has consisted of:</p> <ul style="list-style-type: none"> <li>▪ evidence that the applicant has undergone a gender reassignment surgery and a hormonal treatment</li> <li>▪ psychiatric reports that the applicant has been diagnosed with a transgender condition</li> </ul> <p>In all cases, the courts have appointed a medical physician examiner and a psychiatrist/psychologist to determine the applicant’s sex/gender, their physical transformation and mental condition, and whether granting or refusing to legal gender recognition would impact their mental condition.<sup>271</sup></p> <p>No court decision allowing legal gender recognition has been appealed by the public ministry. As such, the Court of Cassation has not yet ruled on the matter. In the absence such a ruling and specific legislation, legal gender recognition is still within the domain of “personal status magistrates.”<sup>272</sup></p>
	<b>Laws used against transgender and gender diverse people</b>	
	<b>Legislation</b>	Penal Code 1943. <sup>273</sup>
	<b>Quote/details</b>	<div style="border: 1px solid #ccc; padding: 10px;"> <p>Article 521. <i>Disguising as a woman.</i></p> <p>Any man who disguises himself as a woman and enters a place specifically for women only or a place in which anyone aside from women are prohibited from entering may be jailed for no more than 6 months.<sup>274</sup></p> <p>Article 523.</p> <p>Any person who practices secret prostitution or facilitates it is punishable from one month to one year imprisonment.</p> </div> <p>[DE JURE CRIMINALISATION]</p> <p>Article 534 prohibits “sexual intercourse against nature” and has been applied to intercourse between men and between women.</p> <p>[DE FACTO CRIMINALISATION]</p>

<sup>270</sup> Qorras, Youmna Makhoul and Marsa Sexual Health Center, “Laws, regulations, policies and jurisprudence regarding transgender individuals under Lebanese Law”. For Arabic original: <https://tajassod.qorras.com/legal-info/>

<sup>271</sup> Ibid.

<sup>272</sup> Ibid.

<sup>273</sup> Human Dignity Trust, Country Profile: Lebanon: <https://www.humandignitytrust.org/country-profile/lebanon/>

<sup>274</sup> See: [https://sherloc.unodc.org/res/cld/document/lebanon-penal-code\\_html/Lebanon\\_Penal\\_Code\\_1943.pdf](https://sherloc.unodc.org/res/cld/document/lebanon-penal-code_html/Lebanon_Penal_Code_1943.pdf)



## Situation

There have been accounts of prosecution and conviction of trans people based on Article 534, with most reports relating to trans women.<sup>275</sup>

One magistrate reversed this trend by dismissing charges against a trans person who had not obtained legal gender recognition in 2014 in Jdeideh el-Metn. The magistrate said that the application of the Article was based on a "limited definition of the concept of "contrary to nature" and that individuals affected by gender dysphoria... are nevertheless the consequence of natural childbirth." The magistrate also cited the first United Nations Human Rights Council resolution on sexual orientation and gender identity, stating that it "laid out clearly, for the first time, measures to counter rights violations and discrimination against individuals due to sexual orientation or gender identity, and which were non-binding for Lebanon."<sup>276</sup>

Research has found significant overlap between trans women and sex work:

*In the face of unwavering financial and social constraints and obstacles, many transwomen are pushed (to) outdoor sex work to mitigate costs of living, create alternative support networks and so on. Transwomen who engage in sex work practice it outdoors by meeting clients on the streets or negotiating with them over the phone prior to the meeting. In this regard and with the absence of any support or exit programs, they are at a higher risk of being arrested for prostitution and in many cases they become repeat offenders as they always return to the street for work.<sup>277</sup>*

Trans people who have not changed their gender marker are reluctant to file criminal complaints because of harassment by police.<sup>278</sup>

<sup>275</sup> For example, Human Rights Watch, *Don't Punish Me for Who I Am: Systemic Discrimination Against Transgender Women in Lebanon*, 3 September 2019: <https://www.hrw.org/report/2019/09/03/dont-punish-me-who-i-am/systemic-discrimination-against-transgender-women-lebanon>

<sup>276</sup> Qorras, et al., p. 11.

<sup>277</sup> Qorras, et al., p. 12.

<sup>278</sup> Ibid.



# Malaysia

	<b>Name change</b>	Nominally possible.
	<i>Quote/details</i>	<ol style="list-style-type: none"> <li>1. Application to the National Registration Department to change one's Identity Card. However, outcomes are variable depending on the recognizability of the gender of name, which also includes race/ethnic recognizability.</li> <li>2. Court application.</li> </ol>
	<b>Gender marker change</b>	Nominally possible, with prohibitive requirements. <sup>279</sup>
	<i>Authority</i>	Court application—Civil Courts.
	<i>Documents amended</i>	Identity Card—name, gender marker, and last digit of identity card number. <sup>280</sup>  Birth certificates have sometimes been allowed to be altered.
	<i>Conditions for gender marker change</i>	<p>In Malaysia, there have been different court decisions about legal gender recognition applications, with inconsistent results. In addition, <i>fatwas</i> (religious edicts or opinions) on transgender persons issued by the Fatwa Council<sup>281</sup> carry weight in public opinion and government policies, influencing the outcomes of these cases.</p> <p>The most progressive case on the matter was <i>JG v Pengarah Jabatan Pendaftaran Negara</i> (High Court of Kuala Lumpur) “<i>JG</i>”. The court followed the Australian case of <i>Re Kevin</i> and rejected the <i>Corbett</i> view of sex as immutably fixed at birth.<sup>282</sup> In the absence of legislative guidance, the court held that medical experts should determine gender, and with both physical and psychological aspects examined by doctors, the court found that the applicant was female and allowed to change the last number on her Identity Card (marking her as female).</p> <p>However, the reasoning in <i>Re JG</i> is not always found instructive in other courts hearing legal gender recognition cases. In 2013 in <i>Kristie Chan v. Ketua Pengarah Jabatan Pendaftaran Negara</i> (2013) 4 CLJ 627, the Court of Appeal rejected a gender recognition application by a transgender woman who had undergone gender affirming surgeries overseas. The court did so on the ground that there was no medical evidence from Malaysian experts on whether gender affirming surgery “changes a person’s gender”.<sup>283</sup></p> <p>In 2016, another High Court level case allowed a transgender man legal gender recognition after evidence of surgeries, finding the court’s standard of proof in <i>Re Kristie Chan</i>, which insisted on chromosomal requirements, to be “impossible” and “unjust”.</p>

<sup>279</sup> Source: Mitch Yusof, Seed Foundation, confirms that there have been no updates to legal gender recognition processes at time of print of this report.

<sup>280</sup> Last number of Identity Card shows gender - odd numbers for male, even numbers for female.

<sup>281</sup> Full name: Muzakarah of the Fatwa Committee, of the National Council for Islamic Affairs. A national body issuing Islamic edicts which are religious opinions and in and of themselves do not have legal effect unless gazetted.

<sup>282</sup> In the United Kingdom decision of *Corbett v Corbett* [1970] 2 All ER 33, the court construed a medical test for gender which had far reaching consequences beyond the UK for decades afterwards. The *Corbett* test was applied in many jurisdictions, which was that a person’s sex is determined by their gonads, genitalia and chromosomes at birth, and therefore a person’s sex is fixed from birth. In *Re Kevin (validity of marriage of transsexual)* [2001] FamCA 1074, an Australian court considered and departed from *Corbett* and found these to be the primary (though not conclusive) factors to be taken into account when determining a person’s gender for the purpose of marriage: their biological and physical characteristics, their life experiences, their self-perception, the gender they function in society, any hormonal, surgical or other medical treatment. Importantly the court also said at [328]:

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

<sup>283</sup> *Kristie Chan v. Ketua Pengarah Jabatan Pendaftaran Negara* (2013) 4 CLJ 627, at 628. For further discussion, see UNDP-APT report, 2017.

However, in 2017, the Court of Appeal found in favour of the National Registration Department (the government body that issues national identity documents) when it appealed that High Court decision.<sup>284</sup>



## Laws used against transgender and gender diverse people



### Legislation

Minor Offences Act 1955 (as amended up to 2006)



### Quote/details

#### Section 21

*Any person who is found drunk and incapable of taking care of himself, or is guilty of any riotous, disorderly or indecent behaviour, or of persistently soliciting or importuning for immoral purposes in any public road or in any public place... shall be liable to a fine not exceeding twenty-five ringgit or to imprisonment for a term not exceeding fourteen days and on a second or subsequent conviction to a fine not exceeding one hundred ringgit or to imprisonment for a term not exceeding three months or to both.*



### Legislation

Penal Code 1936 (as amended up to 2009)



### Quote/details

#### Section 377A, Carnal intercourse against the order of nature

*Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.*

#### Section 377B, Punishment for committing carnal knowledge against the order of nature

*Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping.*

#### Section 377D, Outrages on decency

*Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.*

### [DE FACTO CRIMINALISATION]



### Situation

#### Shariah laws:

Numerous Malaysian states criminalise *tasyabbuh* i.e. "male posing as woman" and "female posing as man". Five states prohibit: "Any male person who, in any public place, wears a woman's attire and poses as a woman" Nine states prohibit: "Any male person who, in any public place, wears a woman's attire and poses as a woman for immoral purposes." At least three states prohibit: "Any female person who, in any public place, wears a man's attire and poses as a man." Sentences range from fines of 1,000 to 5000 ringgit and prison terms of up to three years.<sup>285</sup>

### [DE JURE CRIMINALISATION]

There are reports of police officers arresting trans women under the criminal code that prohibits "public indecency". There is also evidence that trans women, in particular, experience "oppressive and discriminatory treatment from police officers and Islamic religious officers". They are arbitrarily detained, stopped at unauthorised roadblocks, questioned with sexual undertones, humiliated, intimidated and threatened. Shariah laws, or fatwas, are also used against Muslim and non-Muslim people in Malaysia, including trans persons, who have the additional burden of so-called cross-dressing laws designed to control diverse gender expressions as well as gender identities. As one activist reported:

<sup>284</sup> *Tan Pooi Yee v. Ketua Pengarah Jabatan Pendaftaran Negara [2016] 8 CLJ 427 HC, at Para 64*; For further discussion, see UNDP-APT report, 2017.

<sup>285</sup> Human Dignity Trust, *Injustice Exposed*, p. 109



*A fatwa is just a religious opinion. But, in Malaysia, fatwas bypass legislative processes, and have force of law. Fatwas have huge social and policy impact. Fatwas go through its own process. Upon approval of the state executive council and the Sultan, a fatwa is published in the state gazette and has force of law. Actually, in Malaysia, it is completely inaccurate when people say that fatwas and Syariah laws only affect Muslims, they have an overarching impact on all persons, including trans persons.<sup>286</sup>*

The situation appears to be worsening when, in July 2020, the Religious Affairs Minister from the new ruling coalition publicly called for the arrest and “education” of trans people in Malaysia.<sup>287</sup> This is a dangerous move from the authorities, and as national activists have said, will only lead to vigilante violence.<sup>288</sup>




<sup>286</sup> “Religious edicts, common law courts and legal uncertainty in Malaysia – interview with Thilaga, Justice for Sisters” in International Lesbian, Gay, Bisexual, Trans and Intersex Association: Chiam, Z., Duffy, S. and González Gil, M., *Trans Legal Mapping Report 2017: Recognition before the law* (Geneva: ILGA, November 2017), p.34

<sup>287</sup> South China Morning Post, “Outcry as Malaysia minister calls to arrest and ‘educate’ transgender people”, 17 July 2020: <https://www.scmp.com/week-asia/politics/article/3093482/outcry-malaysian-minister-calls-arrest-and-educate-transgender>

<sup>288</sup> *Ibid.*



# Maldives

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



# Mongolia



	<b>Name change</b>	<b>Possible</b> , unless and until the applicant is serving a parole in lieu of imprisonment.
	<b>Gender marker change</b>	<b>Possible</b> , with prohibitive requirements.
	<i>Legislation</i>	<i>Law on Civil Registration, s.20.1</i> (not trans-specific).
	<i>Quote/details</i>	<div style="border: 1px solid #ccc; padding: 5px;"> <p><i>Section 20.1. If a citizen of Mongolia has changed their sex through medical procedure, and/or is found to be biologically different sex, civil registration unit/officer of the soum/district shall record such change on the basis of the medical certificate, and a new birth certificate and civil identity card shall be issued.<sup>289</sup></i></p> </div> <p>The legislation was amended on 25 June 2009 to allow gender marker change for transgender and intersex individuals who have had a medical diagnosis of transsexuality and have undergone at least one medical procedure.</p>
	<i>Documents amended</i>	Birth certificate, Civil Identity Card (IC), passport, driver's license, social insurance card, medical insurance card.
	<i>Conditions for gender marker change</i>	Since 25 June 2009, intersex and trans people have been able to change their gender marker on identification documents through this law with a medical diagnosis of transsexuality and having undergone at least one medical procedure. The IC holder who applied to effect a change to his/her gender was required to have a medical certificate proving one of the following medical procedures: hormone replacement therapy, any gender confirmation surgery, including cosmetic ones, such as breast implants alone without hormone therapy, or genital surgery.
	<i>Conditions for gender marker change</i>	In November 2018, the law was revised requiring individuals to provide evidence that they have undergone a "full" gender transition – a more arduous requirement than that which existed under the previous version. In this respect, the Government of Mongolia has stepped backwards in its protection of intersex and trans people's human rights. <sup>290</sup>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Situation</i>	There are no <i>de jure</i> laws that target trans persons in Mongolia. However, there are several <i>de facto</i> laws that criminalizes the trans community such as those on sex work, HIV/AIDs, various violations and on military service.
		[DE FACTO CRIMINALISATION]

<sup>289</sup> 20.1. Монгол Улсын иргэн эмнэлгийн журмаар хүйсээ солиулсан, эсхүл байгалийн жамаар нэг хүйс нь давамгайлсан бол энэ тухай эмнэлгийн магадлагааг үндэслэн сум, дүүргийн улсын бүртгэлийн асуудал хариуцсан нэгж, ажилтан бүртгэж, төрсний гэрчилгээ, иргэний үнэмлэхийг шинэчлэн олгож болно.

<sup>290</sup> Source: Mongolia LGBT Centre.



## Myanmar

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible. <sup>291</sup>

<sup>291</sup> Source: National Transgender People Alliance of Myanmar.



## Negara Brunei Darussalam (Brunei)

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.
	<b>Laws used against transgender and gender diverse people</b>	
	<b>Legislation</b>	Syariah Penal Code Order 2013, Section 198. <sup>292</sup>
	<b>Quote/details</b>	<p>(1) Any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place without reasonable excuse is guilty of an offence and shall be liable on conviction to a fine not exceeding B\$1,000, imprisonment for a term not exceeding 3 months or both.</p> <p>(2) Any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place for immoral purposes is guilty of an offence and shall be liable on conviction to a fine not exceeding B\$4,000, imprisonment for a term not exceeding one year or both.</p> <p>[DE JURE CRIMINALISATION]</p>
	<b>Situation</b>	According to one civil society report, this provision of the Syariah Penal Code applied to Muslims and non-Muslims appearing in public as “a man posing as a woman or vice versa”. This report states that this “affects all tomboys, masculine-looking women, transgender women, and cross-dressing individuals who are citizens and non-citizens, including migrant workers.” <sup>293</sup> Given the current country situation in Brunei, where through the phasing in of its Syariah Penal Code Order (2013) in April 2019, <sup>294</sup> it is difficult to access LGBT or trans activists from Brunei.

<sup>292</sup> Source: Human Dignity Trust, *Injustice Exposed*. Syariah Penal Code Order (2013): [http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette\\_PDF/2013/EN/s069.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/s069.pdf)

<sup>293</sup> IGLHRC, “Discrimination and Violence Against Women in Brunei Darussalam on the Basis of Sexual Orientation and Gender Identity”, November 2014, p.4: [https://www.outrightinternational.org/sites/default/files/Brunei1014WCover\\_0.pdf](https://www.outrightinternational.org/sites/default/files/Brunei1014WCover_0.pdf)

<sup>294</sup> Human Rights Watch, “Brunei’s Pernicious New Penal Code”, 22 May 2019: <https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code>



# Nepal

	<b>Name change</b>	<b>Nominally possible.</b>
	<i>Quote/details</i>	The Nepali Supreme Court ruled in January 2017 / <i>Magh 2073</i> that trans persons should be able to change their name as well as their gender marker ( <i>Sunil Babu Pant and others v Government of Nepal</i> , 070-WO-0287, the Supreme Court, Nepal. 2013 filing). <sup>295</sup>
	<b>Gender marker change</b>	<b>Possible.</b>
	<i>Legislation</i>	<p><i>Constitution of Nepal</i>, 2015.</p> <div data-bbox="603 629 1270 696" style="border: 1px solid #ccc; padding: 5px;"> <p><i>Article 12. Any citizen by descent of Nepal may obtain a Citizenship Certificate in their correct gender identity.</i></p> </div>
	<i>Documents amended</i>	Citizenship certificate, passport.
	<i>Conditions for gender marker change</i>	<p>As at the time of publication, Nepal's House of Representatives is discussing a bill to amend the Citizenship Act which would impact on the rights of trans persons. The bill proposes onerous proof of sex change requirements for a person to obtain a change of gender marker on their Citizenship Certificate/citizenship card.<sup>296</sup> This proposal contradicts the Pant Supreme Court case (discussed below).</p> <p>The options for gender marker on a Citizenship Certificate are male, female, and 'other'. Supreme Court decisions and resulting changes to laws and policies enable transgender people to select a third gender option, "Other", based on self-defined gender identity.</p> <p>While there are no provisions explicitly enabling a transgender person to change their gender marker from male to female or vice versa, anecdotal evidence suggests that at least one transgender woman has been able to obtain a female gender marker, and one transgender man has obtained a male gender marker. In both situations, evidence of gender affirming medical interventions was required.</p> <p>The Constitutional provision is only valid for a first Citizenship Certificate, not an amendment to an already-issued Certificate.<sup>297</sup> However, the January 2017 decision of <i>Sunil Babu Pant and others v Government of Nepal</i>, ruled that existing citizenship certificates should also be amended.</p> <p>The 2007 case of <i>Pant v Nepal</i> holds that persons should be allowed to request legal status in 'third gender' non-binary categories. Citizenship certificates with third gender/'O' markers can be issued to trans persons.</p> <p>In 2015, Nepal began issuing passports with third gender/'O' markers, after the Supreme Court decision <i>Dilu Dibuja v. the Ministry of Foreign Affairs</i>, ordered that a transgender person be given a passport that matched their citizenship certificate.</p>

<sup>295</sup> UNDP-APTN report, 2017.

<sup>296</sup> Source: Blue Diamond Society. See also: <https://kathmandupost.com/national/2019/03/17/nepal-governments-proposed-amendment-to-the-citizenship-act-could-affect-the-future-rights-of-sexual-minorities>

<sup>297</sup> USAID/UNICEF/UNDP, *Being LGBT in Asia: Nepal Country Report*, 2014, p. 32.



# Oman



## Laws used against transgender and gender diverse people



### Legislation

Penal Code 2018.<sup>298</sup>



### Quote/details

Article 266.

Any male who:

- a. through speech or action, treats a female in a way that offends her modesty.
- b. Intrudes upon a female in a private area.
- c. Disguises himself as a female and enters a female-only area.
- d. publicly appears in a female outfit, either in his way of clothing or body appearance.

Will be subject to a prison sentence of one month to one year and a fine of 100 to 300 Omani Riyal or by any of these penalties.

[DE JURE CRIMINALISATION]

<sup>298</sup> Source: Human Dignity Trust, *Injustice Exposed*. Royal Decree No. 7/2018 promulgating the Penal Code – translated from the original text: <http://qanoon.om/p/2018/rd2018007>



# Pakistan

	<b>Name change</b>	Possible, as part of gender marker change process.
	<i>Quote/details</i>	<p>It is possible to change your identity card details via <a href="http://id.nadra.gov.pk/modify-id/">http://id.nadra.gov.pk/modify-id/</a>.</p> <p>Name change to the National Identity Card (CNIC) requires an affidavit witnessed by two people. Name change on a passport requires a name change announcement in a newspaper.</p>
	<b>Gender marker change</b>	Possible, without prohibitive requirements.
	<i>Legislation</i>	<i>Transgender Persons (Protection of Rights) Act 2018.</i>
	<i>Quote/details</i>	<p><b>s.3 Recognition of identity of Transgender Person</b></p> <p>(1) A transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of this Act.</p> <p>(2) A person recognized as transgender under sub-section (1) shall have a right to get himself or herself registered as per self-perceived gender identity with all government departments including, but not limited to NADRA.</p> <p>(3) Every transgender person, being the citizen of Pakistan, who has attained the age of eighteen years shall have the right to get himself or herself registered according to self-perceived gender identity with NADRA on the CNIC, CRC, Driving Licence and passport in accordance with the provisions of the NADRA Ordinance, 2000 or any other relevant laws.</p> <p>(4) A transgender person already issued CNIC by NADRA shall be allowed to change the name and gender according to his or her self-perceived identity on the CNIC, CRC, Driving Licence and passport in accordance with the provisions of the NADRA Ordinance, 2000.<sup>299</sup></p>
	<i>Documents amended</i>	National identity card (CNIC), Child registration certificate (CRC), driver's licence, passport.
	<i>Conditions for gender marker change</i>	<p>In 2009, the Supreme Court handed down a decision allowing for 'third gender' as a choice in the national identity card registry (<i>Khaki v Rawalpindi</i> 43/2009). In June 2017, the first passport with an 'X' marker for transgender/third gender was issued by the National Database and Registration Authority.</p> <p>However, it is difficult for many trans persons to obtain a national identity card (CNIC), particularly as parental involvement is required. The Lahore High Court recently ruled that a transgender person could use her guru's name in place of her father's in applying for a CNIC.<sup>300</sup> Per the 2017 UNDP report, a requirement for a medical examination before a CNIC was issued was removed following pressure from the trans community.</p> <p>A CNIC can have any one of five gender options: male, female, <i>khwaja sira</i> (<i>mard</i> / male for uncastrated), <i>khwaja sira</i> (<i>aorat</i> / female for castrated) and <i>khunsa-e-mushkil</i> (indeterminate). Any of these last three terms might be used by <i>khwaja sira</i> and/or by intersex people and are marked on the CNIC with an 'X'.</p> <p>Currently there is no general facility for recognition of binary trans identities in Pakistan; however, two court cases where the petitioner requested and was granted permission to proceed with gender-affirming surgical procedures following a medical diagnosis of 'Gender Identity</p>

<sup>299</sup> See: [http://www.na.gov.pk/uploads/documents/1526547582\\_234.pdf](http://www.na.gov.pk/uploads/documents/1526547582_234.pdf). Also see International Commission of Jurists, Pakistan: Transgender Persons (Protection of Rights) Act, 2018 - A Briefing Paper, Geneva: March 2020: <https://www.icj.org/the-icj-releases-briefing-paper-on-pakistans-transgender-persons-protection-of-rights-act-2018/> Ver: [http://www.na.gov.pk/uploads/documents/1526547582\\_234.pdf](http://www.na.gov.pk/uploads/documents/1526547582_234.pdf).

<sup>300</sup> Source: <https://www.pakistantoday.com.pk/2017/09/27/lhc-allows-transgenders-to-use-gurus-name-in-cnics/>.



Disorder' subsequently allowed those petitioners to change their identity documents to their correct, binary-identified gender marker.<sup>301</sup>

The situation for trans masculine persons under this law is more precarious, with civil society reporting that government policy makers have suggested they be given the gender option of *khwaja sira* (mard), even though *the Transgender Persons (Protection of Rights) Act*, s.3(4) gives them the option to self-identify and choose the male category. This is due to a societal (and therefore governmental) lack of understanding of trans identities beyond *khwaja sira*.

People with gender expressions that are considered questionable by the National Database and Registration Authority (NADRA), for example not being masculine or feminine enough, have been asked for medical certification of sex/gender reassignment, even though this contradicts s.3(1) of the Act.<sup>302</sup>

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<sup>301</sup> UNDP-APT report, 2017.

<sup>302</sup> Source: Mani AQ, HOPE Organisation.



# People's Republic of China

	<b>Name change</b>	Possible.
	Legislation	General Principles of the Civil Law of the People's Republic of China (1986), Article 99.
	<b>Gender marker change</b>	Possible, with prohibitive requirements. <sup>303</sup>
	Authority	MPSA Ordinance No. 13I (2002).
	Documents amended	户口 (hù kǒu) or household and family registration. <sup>304</sup>
	Conditions for gender marker change	According to the UNDP-APTN report, China's process for gender marker change is as follows: <div data-bbox="608 748 1270 1128" style="border: 1px solid #ccc; padding: 10px; margin-top: 10px;"> <p>The steps to follow to amend one's sex marker on the hù kǒu (household register) are numerous.</p> <p>Generally, a person needs to show a gender determination certificate, which is from a hospital verifying gender affirming surgeries have taken place.</p> <p>However, in order to qualify for such surgeries, the person needs to undergo a psychiatric diagnosis, verification of no prior criminal record, proof that the family has been notified, written agreement from their family and work unit, that they are unmarried and over 20 years old. In addition, the psychiatric diagnosis is not given to someone who is not exclusively heterosexual.</p> <p>After the surgeries and the issuance of the gender determination certificate, the person can apply to amend the sex marker on the hù kǒu, however, at this point they again need approval from their work unit or educational institution.<sup>305</sup></p> </div>

<sup>303</sup> Source: Ripley Wang, ILGA Asia, confirms that there have been no updates to legal gender recognition processes at time of print of this report.

<sup>304</sup> The Chinese household registration is an old and complicated system by which individuals and families are recorded by the state and impacts many areas of life including where one is allowed to work and live.

<sup>305</sup> UNDP-APTN report, 2017.



# Philippines

	<b>Name change</b>	Not possible, with some exceptions.
	<b>Gender marker change</b>	Not possible, with some exceptions. <sup>306</sup>
	<i>Quote/details</i>	It is not legislated for in the Philippines, however, in some lower provincial courts, some trans people have been able to change their name and/or gender markers. <sup>307</sup>

<sup>306</sup> Source: STRAP confirms that there have been no updates to legal gender recognition processes at time of print of this report.

<sup>307</sup> UNDP-APTN report, 2017.



## Republic of Korea (South Korea)

	<b>Name change</b>	Possible.
	<i>Legislation</i>	<i>Act on the Registration etc. of Family Relationship, s. 12.</i>
	<i>Quote/details</i>	<p>Name change is available in South Korea regardless of a person's gender identity or completion of gender recognition process. The Family Court permits the first change of name easily.</p> <p>However, any subsequent application to change one's name is more difficult. Many trans persons change their name before the gender recognition process because of very strict requirements for gender recognition.</p>
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	<i>Authority</i>	Administrative Rule and court application (Supreme Court precedents: 2006, 2011)
	<i>Documents amended</i>	Family Relation Register. <sup>308</sup> Following a Family Relation Register change, Identity Cards and passports can be changed.
	<i>Conditions for gender marker change</i>	<p>Because there is no legislation to guide gender marker change and only the Supreme Court precedents and guidelines, individual courts have some discretion in how they allow legal gender recognition. Following are the general requirements:</p> <ol style="list-style-type: none"> <li>1. Have legal capacity; age 19 years or older</li> <li>2. Be diagnosed with "Transsexualism: Gender Identity Disorder"</li> <li>3. Be currently unmarried</li> <li>4. Have no minor children</li> <li>5. Be sterilised</li> <li>6. Have had sex reassignment surgery, including genital surgery</li> <li>7. Be "socially acceptable", that is not causing any significant change in social status in relation to others<sup>309</sup></li> </ol>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Legislation</i>	<i>Military Service Act, Article 86 (Desertion, bodily injury, etc.)</i>
	<i>Quote/details</i>	<i>Any person who deserts, absconds, or injures his body or commits a deceitful act, with the intention of evading military service or having military service reduced or exempted, shall be punished by imprisonment with labour for not less than one year, but not more than five years.</i>
	<i>Legislation</i>	<i>Military Criminal Act, Article 92(6) (Disgraceful conduct)</i>
	<i>Quote/details</i>	<i>A person who commits anal sex or other disgraceful conduct on a person falling under any provision of Article 1(1)-(3) shall be punished by imprisonment with prison labour for not more than two years.</i>
	<i>Legislation</i>	<i>Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes, Article 12 (Intrusion upon publicly used places with the intent to satisfy sexual urges)</i>

<sup>308</sup> Used as a birth certificate is used in other countries. Although there is a registration of birth for statistical purposes, this certificate is used for internal administration purposes, not identification.

<sup>309</sup> Source: Korean Lawyers for Public Interest and Human Rights (KLPH).

§	Quote/details	<p><i>A person who intrudes upon any publicly used place used by many and unspecified people including toilets, public baths, bathrooms, saunas, breast-feeding facilities and dressing rooms, or who refuses to leave such a place upon demand, with the intent to satisfy his/her own sexual urges, shall be punished by imprisonment for not more than one year or by a fine not exceeding 3,000,000 won.</i></p>
...	Examples	<p>[DE FACTO CRIMINALISATION]</p> <p>As conscription is mandatory in South Korea, there are a number of cases in which transgender women who undergo hormone replacement therapy have been prosecuted under the <i>Military Service Act</i>, with the charge of “injuring their body” with the intention of evading military service. Further although usually applied to gay men, transgender women who have not undergone legal gender recognition and still have male gender markers have been punished under Article 92(6) of the <i>Military Criminal Act</i> (“disgraceful conduct”) which deems same-sex activity as punishable although it is not in civilian life.<sup>310</sup></p> <p>Also in line with legal gender recognition, trans women with male gender markers and who use female restrooms have been arrested under the <i>Act on Special Cases Concerning The Punishment, etc of Sexual Crimes</i>. As in other countries that criminalise sex work, trans sex workers are also arrested under the <i>Act on the Punishment of Arrangement of Commercial Sex Acts, etc.</i><sup>311</sup></p>

<sup>310</sup> See: BBC News, “South Korean transgender soldier to sue over dismissal”, 22 January 2020: <https://www.bbc.com/news/world-asia-51204323>

<sup>311</sup> Source: Korean Lawyers for Public Interest and Human Rights (KLPH).



# Singapore

	<b>Name change</b>	Possible.
	Legislation	<i>National Registration Regulations, reg. 10(2)(a).</i>
	Quote/details	<p><i>Replacement identity cards for incorrect particulars.</i></p> <p>10. (2) A registration officer, if satisfied that any person who –</p> <p>(a) reports any change of name under paragraph (1), has in fact changed his name, [...]</p> <p>may issue him a replacement identity card.</p> <p>By application to the ICA with deed poll to change the identity card (IC). Birth certificates cannot be altered. Note also the restriction for Muslim Singaporeans and some Indian Singaporeans who are unable to change the terms “bin”/ “son of” or “binte”/ “daughter of” from their legal name unless they have also effected a gender marker change. However, they can request that these parts of their name be removed completely.</p> <p>Civil society gives information about changing one’s name on university or polytechnic documents for those who can present a deed poll or IC in their new name. So far there have been no reports of this being possible at other educational institutions (e.g. secondary schools or junior colleges).<sup>312</sup></p>
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	Legislation	<i>National Registration Regulations, reg.10(2)(b) (not trans-specific) and policy.</i>
	Quote/details	<p><i>Replacement identity cards for incorrect particulars.</i></p> <p>Article 10(2) A registration officer, if satisfied that any person who – [...] (b) reports that any particulars on his identity card, other than his address, are incorrect, may issue him a replacement identity card.</p>
	Documents amended	National Registration Identity Card (IC). *Birth certificates cannot be altered.
	Conditions for gender marker change	<p>The Immigration and Checkpoints Authority (ICA) policy is that: Identity Card holder who applies to effect a change to his/her gender is required to produce a medical certificate/doctor’s memo which indicates that the IC holder has completed gender reassignment surgery from male to female or vice versa.</p> <p>Once satisfied that a complete change in gender from one to another is in order, the registration officer can proceed to update the changes and process the application for a new IC, at the prevailing replacement rates.</p> <p>As of November 2017, there are requirements in place that supplement the non-definition of surgery in the policy. The person has to show proof of “sex reassignment surgery with the result that the patient’s genitalia has <i>completely</i> changed from male/female to female/male genitalia” (emphasis in Medical Examination Report). The Medical Examination Report form is not transparently available on the ICA website. The medical examination must be carried out and signed by a specialist in endocrinology, plastic surgery, gynaecology or urology registered in Singapore, and the medical specialist may be liable to prosecution or disciplinary action for providing false information.<sup>313</sup></p>

<sup>312</sup> For practical steps, see: <https://transendersg.com/docs/>

<sup>313</sup> Ibid.



## Sri Lanka







	<b>Name change</b>	Possible.
	<i>Quote/details</i>	For the same documents and with the same procedures as those for gender marker change.
	<b>Gender marker change</b>	Possible.
	<i>Authority</i>	Department of Registrar General, Policy of the Ministry of Health, Nutrition and Indigenous Medicine.
	<i>Documents amended</i>	Birth certificate (with a note that the birth gender is amended). All other documents have legal value including the National Identity Card, passport and driver's license (without reference to birth gender).
	<i>Conditions for gender marker change</i>	<p>The issuance of a Gender Recognition Certificate (GRC), by the Ministry of Health, Nutrition and Indigenous Medicine, allows for a change of gender in the birth certificate.</p> <p>The GRC is issued after the person receives psychiatric diagnosis of transsexualism based on the International Classification of Disease (10<sup>th</sup> revision), is referred for hormone and surgical treatment, and undergoes treatment in accordance to the <i>World Professional Association of Transgender Health's Standards of Care</i>.</p> <p>The GRC will be issued only to transgender persons above 16 years of age, according to a general circular issued by the Ministry of Health, Nutrition and Indigenous Medicine. If the person is not supported by their parents, they will have to wait until they turn 21 years of age, according to the Births and Deaths Registration Act. Applicants below 21 years of age also require parental approval to make amendments to birth certificates.<sup>314</sup></p>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Legislation</i>	<i>Penal Code 1883.</i>
	<i>Quote/details</i>	<p><i>Section 399. Cheating by personation.</i></p> <p><i>A person is said to 'cheat by personation' if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.</i></p> <p>[DE FACTO CRIMINALISATION]</p>
	<i>Situation</i>	There are extensive reports about trans people being targeted and arrested by the police under the law on impersonation. The reports refer to the targeting of a person's gender expression. From 2014 to 2016, cases of targeting of trans women and trans men have been recorded. There was also a case of a trans man being sued under this law for marrying a woman on the charge of impersonating a man. <sup>315</sup>

<sup>314</sup> Source: Thenu Ranketh, Executive Director, Venasa Transgender Network.

<sup>315</sup> Source: Human Dignity Trust, *Injustice Exposed*.



# Tajikistan





	<b>Name change</b>	Possible.
	<i>Legislation</i>	<i>Law on Name Change.</i>
	<i>Quote/details</i>	No non-binary options available.
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	<i>Authority</i>	Health Code law on “change of sex” and Registry Acts.
	<i>Quote/details</i>	Although possible, there are unclear medical requirements to change one’s legal gender marker. <sup>316</sup>

<sup>316</sup> Source: Anonymous activist, Tajikistan. Also see ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People in Tajikistan covering the period of January to December 2018”: <https://www.ilga-europe.org/sites/default/files/tajikistan.pdf>





# Thailand

	<b>Name change</b>	Possible.
	<i>Legislation</i>	<i>Person Name Act, B.E. 2505 (1962).</i>
	<i>Quote/details</i>	<p>Thai citizens can change their names; however, they only have legal status once the name is registered.</p> <p>Reportedly, registrars often deny requests from trans people based on a principle in their operational manual that requires a person's name to indicate whether the individual's gender is male or female.<sup>317</sup> Typically, this provision is interpreted as requiring a person's gender to be based on their sex assigned at birth.</p> <p>However, there is no provision for Thai citizens to change their prefix/salutation on official documents, which is based on the sex assigned at birth. The use of a prefix/salutation is legally enforced. Therefore, even if a person can change their name, their prefix/salutation remains unchanged.<sup>318</sup></p>
	<b>Gender marker change</b>	Not possible. <sup>319</sup>

<sup>317</sup> The "Person Name Determination Principle", in the operational manual for the Department of Provincial Administration, Ministry of Interior: UNDP-APT report, 2017.

<sup>318</sup> UNDP-APT report, 2017.

<sup>319</sup> Source: Nachale (Hua) Boonyapisompan, Foundation of Transgender Alliance for Human Rights, confirms that there have been no updates to legal gender recognition processes at time of print of this report.









## Turkmenistan

	<b>Name change</b>	Unclear.
	<b>Gender marker change</b>	Possible.
	<i>Conditions for gender marker change</i>	Trans people, mostly trans women, in Turkmenistan are often jailed or persecuted by a law ( <i>Besakal Bozlique</i> ) that prohibits male homosexuality. If they approach the authorities to access legal gender recognition, they risk being arrested under this law because of the conflation of sexual orientation and gender identity. <sup>320</sup>

<sup>320</sup> Source: Anonymous activist, Turkmenistan.



# United Arab Emirates

	<b>Gender marker change</b>	Not possible.
	<i>Situation</i>	<p>In 2016, the United Arab Emirates passed a new Medical Liability Law which made legal surgical procedures “by which a transgender person’s physical appearance and function of their existing sexual characteristics are altered to resemble that of their identified gender” if it is “part of a treatment for gender dysphoria in transgender people, as advised by a medical commission to be set up for this purpose”.<sup>321</sup> However, despite this, cases of trans persons who seek name and gender marker change are still unable to legally change their documents. In 2018, two trans men were rejected by a court in their application for legal gender recognition.<sup>322</sup></p>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Legislation</i>	<i>Penal Code.</i>
	<i>Quote/details</i>	<div data-bbox="762 813 1422 965" style="border: 1px solid #ccc; padding: 5px;"> <p><i>Article 359.</i>  <i>Any male disguised in a female apparel and enters in this disguise a place reserved for women or where entry is forbidden, at that time, for other than women. Should the male perpetrate a crime in this condition, this shall be considered an aggravating circumstance.</i></p> </div> <p>[DE JURE CRIMINALISATION]</p>
	<i>Situation</i>	<p>Trans women and effeminate cis men are targeted by Article 359, who have been arrested simply for “looking feminine”. This happens to Emirati locals as well as foreigners who live, work or holiday in the United Arab Emirates. In a widely publicised case in 2017, two Singaporeans – a cis male photographer and a trans woman fashion model – were arrested in Abu Dhabi shopping mall, and held for three weeks in custody.<sup>323</sup> This was despite them not being in a place reserved for women. Both were travelling on passports with male gender markers. They were both initially sentenced to one year imprisonment and then later released with a fine and deported.<sup>324</sup></p>

<sup>321</sup> <https://www.thenational.ae/uae/health/new-uae-law-allows-gender-reassignment-surgery-1.218691>

<sup>322</sup> <https://www.thenational.ae/uae/transgender-emiratis-fail-in-legal-bid-to-have-new-sexes-recognised-1.715356>

<sup>323</sup> <https://www.hrw.org/news/2017/09/07/uae-stop-policing-gender-expression>

<sup>324</sup> <https://www.middleeasteye.net/news/uae-drops-jail-term-singaporeans-dressing-feminine>










# Uzbekistan

	<b>Name change</b>	Possible.
	<i>Legislation</i>	<i>Law on Name Change.</i>
	<i>Quote/details</i>	No non-binary options available.
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	<i>Conditions for gender marker change</i>	Trans people, mostly trans women, in Turkmenistan are often jailed or persecuted by a law (Besakal Bozliqie) that prohibits male homosexuality. If they approach the authorities to access legal gender recognition, they risk being arrested under this law because of the conflation of sexual orientation and gender identity. <sup>325</sup>

<sup>325</sup> Source: Anonymous activist, Uzbekistan.



# Vietnam

	<b>Name change</b>	Possible.
	<i>Legislation</i>	<i>Civil Code</i> , Article 27(e): Right to change surnames and given names.
	<i>Quote/details</i>	<div style="border: 1px solid #ccc; padding: 5px; margin-bottom: 10px;"> <p><i>Article 27(e): Right to change surnames and given names. (e) Where the surname and/or given name of the person are to be changed upon a re-determination of the gender of the person;</i></p> </div> <p>Presumably after legal gender change is available in Vietnam, this Article can be applied to trans persons who meet these requirements.</p>
	<b>Gender marker change</b>	<b>In the process of being introduced</b> (likely with prohibitive requirements).
	<i>Legislation</i>	<i>Civil Code</i> and <i>Decree No. 88/2008/ND-CP</i> , Article 37.
	<i>Documents amended</i>	Birth certificate, Family Register, Identity Card, passport.
	<i>Conditions for gender marker change</i>	<p>"Sex reassignment surgery" or "surgery" - not yet defined.</p> <p>The process for laws to come into existence in Vietnam is complicated and lengthy, with six steps between when a law is passed until it becomes active.<sup>326</sup></p> <p>Although Article 37 of the Civil Code came into force on 1 January 2017, it is not able to be utilised until guidelines are drafted. Although the draft law has received feedback from the Ministry of Justice, it has not been signed by the Minister and cannot be received or debated in the National Assembly, which also means it cannot be approved by the Ministry of Health.<sup>327</sup></p>

<sup>326</sup> See interview with Chu Thanh Ha in International Lesbian, Gay, Bisexual, Trans and Intersex Association: Chiam, Z., Duffy, S. and González Gil, M., *Trans Legal Mapping Report 2017: Recognition before the law* (Geneva: ILGA, November 2017), p. 43. <https://ilga.org/trans-legal-mapping-report>

<sup>327</sup> Source: Chu Thanh Ha, It's T Time

# Europe

by Sandra Duffy and Lara Goodwin

## **Legal gender recognition—Sandra Duffy**

Europe continues to be a varied terrain for trans rights and access to gender marker change, with laws ranging from self-declaration regimes and recognition for non-binary or intersex persons, to complete prohibition of gender marker change. In the time since 2017 edition of this report, Europe has also seen the continuation of the refugee crisis and the ongoing, as of the time of writing, COVID-19 pandemic. However, rather than see these as opportunities to bolster efforts to protect human rights, some European countries have turned away from human rights philosophies and toward a more regressive, darker path.

The second edition of this report was published in the immediate aftermath of the European Court of Human Rights decision in *A.P., Garçon and Nicot v France*. Since that ruling, which prohibited forced sterilisation or other irreversible surgical interventions as a precondition for legal gender marker change, several European countries have changed or updated their legal gender recognition laws to reflect the change. **Belgium** and **Portugal**, for example, have introduced new laws without medical requirements, while **France** itself had removed sterilisation requirements from its law while the A.P. case was ongoing. **Greece** and **Luxembourg** also introduced new, non-pathologised laws on gender marker change.

Some established legislation has also received review in this period, including that of **Ireland**. Although the Gender Recognition Act 2015 Review, produced by a Government-established committee, had proposed some progressive changes including recognition for non-binary persons and an option for legal gender marker change for children under sixteen years, most of the recommendations were not accepted by the Minister for Social Protection. It appears that the only recommendation which will be enacted is that regarding a clearer pathway to legal gender marker change for minors aged 16-17 years. In the **United Kingdom**, it has been promised that the long-awaited review of the Gender Recognition Act 2004 will be published later. The review has been a source of huge controversy in the UK, with a virulent anti-trans rights campaign firmly opposed to introducing a system of self-declaration or allowing children to access gender marker change. The Conservative Minister for Women and Equalities, Liz Truss, has made statements which indicate that she is in favour of keeping “checks and balances” in the system, leaving trans persons and advocates concerned that the promised review will not adequately address the regressive elements of the 2004 Act, including pathologised requirements and compulsory spousal consent.

Further worrying developments have arisen in Eastern Europe, where **Bulgaria** and **Hungary** have taken steps to ending the recognition of trans persons entirely. In Bulgaria, a Constitutional Court case on the constitutionality of the Istanbul Convention on Violence Against Women found that accepting a concept of ‘gender’ not founded on biological sex would be antithetical to Bulgarian law, which is “based on the understanding of the binary existence of the human species.” This would seem to render legal gender marker change unconstitutional under Bulgarian law. As at May 2020, the Hungarian Parliament is debating a provision, introduced as part of a pandemic response package, which would define gender as “biological sex based on primary sex characteristics and chromosomes,” and thereby outlaw gender marker change. Of course, as Bulgaria and Hungary are both parties to the European Convention on Human Rights, both laws should expect successful Court challenges to their validity in the near future.

At the European Court of Human Rights, recent trans law cases have included *S.V. v Italy*, in which the Court decreed that the refusal under Italian law to allow a trans woman to change her first name before undergoing surgical interventions was a violation of her Article 8 ECHR right to privacy. Two interesting cases currently pending before the Court, *Y.P. v Russia*, and *O.H. and G.H. v Germany*,

both deal with the registration of transgender parents on their children's birth certificates. Trans parenting and the legal registration of trans parents will therefore likely become a topic of interest to the Court in the near future.

Some interesting constitutional cases have also arisen in European countries. In July 2019, the Spanish Constitutional Court declared that **Spain's** law on gender marker change was unconstitutional as it applied to minors, who had thereto been barred from changing their legal gender. In **Germany**, in January 2019, the Constitutional Court held that children born with intersex sex characteristics can have their birth certificates marked "divers." Intersex adults can apply for the same designation with a medical certificate.

### **Criminalisation**—Lara Goodwin

When researching the criminalisation of trans people there appeared to be a distinction between states that criminalised *de jure* and *de facto*. *De jure*, those laws that on the face of it, and in law, target trans people – laws that criminalise dress for example – and those laws that do not on paper target trans people but do in fact, through their implementation and enforcement, *de facto*.

The situation in Europe largely falls into the latter category; *de facto* criminalisation where trans people are targeted using a plethora of laws which in and of themselves may not be "bad laws" but are abused by law enforcement. These laws include 'disorderly conduct' in **Georgia**,<sup>328</sup> 'hooliganism' and 'fighting against illness caused by HIV' in **Azerbaijan**<sup>329</sup> and in **Turkey**, 'breaking the peace'<sup>330</sup> and even Highway Traffic Regulations. The multiplicity of laws used in the region to target trans people evidences the way in which states with ostensibly progressive legal frameworks will still appropriate indiscriminate laws and use them to discriminate against trans people if prejudicial law enforcement wishes to.

The inclusion of the **United Kingdom's** concept of the 'non-disclosure' and 'deception' of trans identity when it comes to sexual consent is to highlight the transphobia that is embedded in common law jurisdictions and in judicial decisions.

It is by no means to say that all criminalising laws highlighted in this section are indiscriminate. Of the patterns of criminalisation that emerged across the region, the most prevalent was the way in which trans people are targeted using sex work laws. Reports from the countries outlined demonstrate that trans sex workers, or those perceived to be sex workers, are disproportionately and relentlessly targeted using these laws. In states such as **Ireland**, that purport to protect sex workers, criminalisation models such as the 'Nordic Model'<sup>331</sup> undermine their safety and often result in criminalisation of the worker themselves. The emulsion of discriminatory sex work laws – built on ill-advised and clunky notions of protection of public health, public order and for sex workers themselves – and public and state authorities' stigma-fuelled attitudes towards sex work, creates an incredibly dangerous situation for trans sex workers.

Another widespread pattern, which is disturbingly foreseeable, was the harassment, arrest and detention experienced by trans people at the hands of law enforcement. It is commonplace for law enforcement to arrest and detain individuals without legal basis. Where legislation is invoked it is often on spurious charges. Across all European countries listed there were instances of police

<sup>328</sup> Article 166, *Administrative Offences Code of Georgia 1984*, available <https://matsne.gov.ge/en/document/download/28216/341/en/pdf>

<sup>329</sup> Article 510, Translation of the *Code of Administrative Offences* to English has different article numbering than the Azerbaijani version. Article 510, *Hooliganism* is Article 296 in the English version and Article 535(1) *Disobedience to the Lawful Demand of a Police Officer* is Article 310(1) in the English version found here: [http://www.ombudsman.gov.az/upload/editor/files/Azerbaijan\\_Code%20on%20Administrative%20offences\\_2000\\_eng.pdf](http://www.ombudsman.gov.az/upload/editor/files/Azerbaijan_Code%20on%20Administrative%20offences_2000_eng.pdf); United Nations Office on Drugs and Crime, "New HIV Law in Azerbaijan," <https://www.unodc.org/centralasia/en/news/new-hiv-law-in-azerbaijan.html>; Azerbaijani version available <http://parliament.gov.az/?/az/legislation/view/1630>

<sup>330</sup> *Law on Misdemeanours 2005* (Law No. 5325), OutRight Action International, "Turkey: Change Law of Misdemeanours to End Abuse of Trans People", 19 November 2009. <https://www.outrightinternational.org/content/turkey-change-law-misdemeanours-end-abuse-trans-people>

<sup>331</sup> For definition and analysis of 'Nordic Model,' see Global Network of Sex Work Projects (NSWP), *Challenging the introduction of the Nordic Model* (Report, December 2017) available [https://www.nswp.org/sites/nswp.org/files/sg\\_to\\_challenging\\_nordic\\_model\\_prf03.pdf](https://www.nswp.org/sites/nswp.org/files/sg_to_challenging_nordic_model_prf03.pdf)

brutality and ill-treatment. This is exacerbated in detention settings, noted in the case studies on **Azerbaijan, Serbia and Turkey**.

The fact that the criminalisation of trans people lies heavily at the discretion of law enforcement and authorities suggests that in countries across Europe, the problem cannot necessarily be rectified through litigation nor through the repeal of certain laws. What is required is a complete upheaval in attitudes and prejudices on the part of the state, the public and, in particular, law enforcement. States should ensure that laws are enforced without discrimination. This is not easily done in countries where trans people are living in dangerously toxic and transphobic societies.<sup>332</sup>

This report goes to print in the midst of the Coronavirus pandemic and an incredibly difficult time for the community. In a statement made on the International Day against Homophobia, Transphobia and Biphobia, the Office of the High Commissioner for Human Rights stated that 'The existence of criminalisation laws... makes LGBT persons more vulnerable to police abuse and arbitrary arrest and detention in the context of movement restrictions and curfews.'<sup>333</sup>

Both the International Committee on the Rights of Sex Workers in Europe (ICRSE)<sup>334</sup> and Sex Workers' Rights Advocacy Network (SWAN)<sup>335</sup> called on states to provide financial support and protection for sex workers for whom lockdowns, self-isolation and travel restrictions means a loss of income. The nature of criminalisation means sex workers cannot access benefits such as sick pay. When people try to work, they may be subject to fines, arrests and ill-treatment by the police for violating lockdown rules. In **Georgia**, a trans sex worker went to extreme measures to highlight the plight of sex workers during the pandemic by setting herself alight as part of a small stage demonstration with other trans sex workers.<sup>336</sup>

What the pandemic has highlighted is the cosmic societal gaps between those who are the most vulnerable and those in power. It has not been a great equaliser but rather laid bare the need for a huge societal shift after decades of inequality. What it has also shown is the community's ability to safeguard one another and lessons learnt over the years have enabled human rights defenders to fight for the rights of LGBTI people even in the darkest of times.

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<sup>332</sup> European Union Agency for Fundamental Rights, *A long way to go for LGBTI equality*, 2020. [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-lgbti-equality\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality_en.pdf), p. 48.

<sup>333</sup> OHCHR, "COVID-19: The suffering and resilience of LGBT persons must be visible and inform the actions of States," Statement by human rights experts on the International Day against Homophobia, Transphobia and Biphobia' Geneva/Washington DC/Strasbourg. 14 May 2020.

<sup>334</sup> International Committee on the Rights of Sex Workers in Europe (ICRSE), "COVID-19: Sex Workers Need Immediate Financial Support and Protection" 18 March 2020. <http://www.sexworkereurope.org/news/news-region/covid-19-sex-workers-need-immediate-financial-support-and-protection>.

<sup>335</sup> Sex Workers' Rights Advocacy Network, "SWAN calls for stronger donor engagement and support for sex workers and sex worker-led organisations" 18 May 2020. <http://swannet.org/en/content/swan-calls-stronger-donor-engagement-and-support-sex-workers-and-sex-worker-led-organisation>.

<sup>336</sup> Umberto Bacchi, "Trans woman sets herself on fire in Georgia as virus lockdown cuts income," Thomas Reuters Foundation, 1 May 2020. <https://news.trust.org/item/20200501135226-pb1jc/>





# Albania

	<b>Name change</b>	Unclear. <i>Cannot find legislation to this effect.</i>
	<b>Gender marker change</b>	Not possible.
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Situation</i>	There are no laws <i>de jure</i> criminalising trans people in Albania. However, trans people, particularly trans sex workers, face discrimination and harassment at the hands of the police. <sup>337</sup>
	<i>Examples</i>	<p>In 2016, a transphobic incident was reported involving the police. LGBTI activists, in particular a transgender woman, were targeted by police officers.<sup>338</sup></p> <p>In 2011, TGEU reported an incident in which a trans person called Paloma had unnecessary violence used against her by police. She was then taken into police custody where violence continued. Throughout the detention, Paloma was not offered legal assistance and was told to sign documents without her consent.<sup>339</sup></p>

<sup>337</sup> PINK Embassy/LGBT Pro Albania, "Alliance Against Discrimination of LGBT Albania and ILGA Europe", *Universal Periodic Review: The situation of lesbian, gay, bisexual and trans (LGBT) people in Albania*, (Report, 2013).

<sup>338</sup> Contribution from Aleanca LGBT, ProLGBT, ILGA-Europe and ERA for Albania's Report 2016, [https://www.ilga-europe.org/sites/default/files/enlargement\\_review\\_albania\\_2016.pdf](https://www.ilga-europe.org/sites/default/files/enlargement_review_albania_2016.pdf)

<sup>339</sup> TGEU, "Transphobic police violence in Tirana, Albania" (Press Release, 15 August 2011) <http://tgeu.org/transphobic-police-violence-in-tirana-albania>



## Andorra



### Name change

Possible. Available generally by deed poll.



### Gender marker change

Not possible.





# Armenia

	<b>Name change</b>	Possible.
	Legislation	Ley del Estado Civil, 2004, article 58.
	Quote/details	<p>Article 58. Change of name.</p> <p>(1) A person who has attained the age of sixteen years is entitled to the established procedure to change his name, including the name and surname.</p> <p>“The established procedure” is an administrative process through the Civil Acts Registration Office. This previously required three witnesses for an applicant to access name change. However, this requirement has been withdrawn since 2017. In December 2018, two trans persons were also able to change their names without a psychological assessment.<sup>340</sup></p>
	<b>Gender marker change</b>	Possible, with unclear requirements.
	Legislation	Law on Civil Status, article 70.
	Quote/details	<p>Article 70. Corrections or changes in civil status documents shall be made by the responsible registrar in the following cases: [...]</p> <p>(c) where a licenced medical organization as established by the legislation of the Republic of Armenia has issued a document on the prescribed form of gender reassignment.</p>
	Conditions for gender marker change	None to be found.
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Criminal Code of Armenia. <sup>341</sup>
	Quote/details	<p>Article 261, Involvement into prostitution</p> <p>(1) Involvement into prostitution, by violence or use of violence, abuse of dependent position, by threat to destroy, steal or damage property, or dissemination of defamatory information about a person or close relatives, or by deception, is punished with a fine in the amount of 200 to 400 minimal salaries, or correctional labor for the term of up to 1 year, or with arrest for the term of 1-3 months, or with imprisonment for the term of up to 2 years.</p> <p>Article 262, Maintaining dens of prostitution or pimping</p> <p>Maintaining dens of prostitution or pimping, is punished with a fine in the amount of 300 to 500 minimal salaries, or correctional labor for the term of up to 1 year, or with arrest for the term of 1-3 months, or with imprisonment for the term of up to 5 years.</p> <p>[DE FACTO CRIMINALISATION]</p>

<sup>340</sup> Source: Armenian NGO, Right Side. Statement: On December 10, 2018, the International Day of Human Rights, for the first time, the Civil Acts Registration Office of the Ministry of Justice of the Republic of Armenia has confirmed the application of two transgender people for legal name change without a psychological conclusion of being transgender, which is not a requirement for legal name change from now on. It should be reminded that in the past, the Civil Acts Registration Office of MOJ of RA required 3 witnesses of an applicant to confirm the name. However, as a result of the effective collaboration of the staff of the "Right Side" human rights defender NGO with the Ministry of Justice of the Republic of Armenia, the requirement for 3 witnesses was withdrawn in 2017. In 2018, Right Side set a task for further facilitation of the legal name change procedure. As a part of advocacy strategy, two trans people applied 2 months ago to the Civil Acts Registration Office of the Ministry of Justice of the Republic of Armenia for their legal name change without a psychological conclusion. The application were confirmed, which is a precedent for Armenia. <http://eng.rightsidengo.com/news/60-from-now-on-the-legal1-name-change-process-does-not-imply-a-psychological-conclusion-of-being-transgender.html>

<sup>341</sup> Criminal Code of Armenia [https://www.unodc.org/res/cld/document/armenia\\_criminal\\_code\\_html/Armenia\\_Criminal\\_Code\\_of\\_the\\_Republic\\_of\\_Armenia\\_2009.pdf](https://www.unodc.org/res/cld/document/armenia_criminal_code_html/Armenia_Criminal_Code_of_the_Republic_of_Armenia_2009.pdf)

	<p><i>Situation</i></p>	<p>Trans and gender diverse people are not <i>de jure</i> criminalised in Armenia. However, they can be targeted indirectly (<i>de facto</i>) by laws criminalising sex work.</p>
	<p><i>Examples</i></p>	<p>Trans sex workers have been charged and fined or imprisoned using Articles 261 and 262 of the <i>Criminal Code of Armenia</i>.<sup>342</sup> Trans sex workers have also faced police harassment and arbitrary arrest without being formally charged.<sup>343</sup></p> <p>Reports also suggest that in recent years, there has been more cooperation between police and trans sex workers and this has resulted in less criminalisation under these laws.<sup>344</sup> Right Side NGO stated that, the “trans community and human rights organisations still have a way to go [to] enhance the cooperation with police and work with the trans community to make sure their needs are met.”<sup>345</sup></p>

<sup>342</sup> Amnesty International, *Less Equal: LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan and Kyrgyzstan* (Report 2017, London), p. 41; Equal Rights Association for Western Balkans and Turkey, Armenia.








<sup>343</sup> PINK Armenia, Heartland Alliance, ILGA Europe and The George Washington University Law School, *Human Rights Violations of LGBT People in Armenia: A Shadow Report* (Submission to the Human Rights Committee, July 2012) available [http://www.pinkarmenia.org/publication/Armenia%20LGBT\\_ICCPR\\_2012\\_en.pdf](http://www.pinkarmenia.org/publication/Armenia%20LGBT_ICCPR_2012_en.pdf).

<sup>344</sup> *Consultation Rim Sardaryan*, 10 May 2019.

<sup>345</sup> Right Side NGO, *Hate Crimes and Other Hate Motivated Incidents Against Trans People in Armenia* (Report 2016-2017).



# Austria

	<b>Name change</b>	Possible, with restrictions.
	<b>Legislation</b>	<i>Name Change Law 1988</i> , <sup>346</sup> as amended 2013.
	<b>Quote/details</b>	<p>Article 2.1.11 allows for a change of family name “<i>aus sonstigen Gründen</i>”/for any other reason”. Article 2.2.3 provides for the ability to change a forename which does not match the gender of the applicant.</p> <p>Name change is an administrative procedure. Last names/family names can be changed “for other reasons” (2.1.11) including trans-related reasons. First names must accord with the legal gender of the person, and no longer being congruent with the person’s gender is a qualifying reason for a change (2.2.3). Change of first name to a gender-incongruent name is not allowed (3.7) but it is possible to choose a ‘gender-neutral’ name.</p> <p>TransX.at states: If the change of name is explained by trans identity, then a psychotherapist or psychiatric statement will be required.</p>
	<b>Gender marker change</b>	Possible.
	<b>Legislation</b>	<i>Civil Status Law 2013</i> , <sup>347</sup> Article 41.
	<b>Quote/details</b>	<div style="border: 1px solid #ccc; padding: 5px;"> <p>(1) <i>The Civil Status Registry has the ability to alter an entry, when it has become incorrect after it is made.</i><sup>348</sup></p> </div>
	<b>Conditions for gender marker change</b>	<p>The details are left to admin procedures and vary by province. TransX.at states:</p> <div style="border: 1px solid #ccc; padding: 5px;"> <p><i>The change of the judicial gender requires one, or in some provincial states two statements from a psychologist, a psychiatrist or a psychotherapist, who confirms the following facts: (1) a permanent feeling of belonging to the other gender, (2) that it is irreversible in all foresight, and (3) that measures have been taken that lead to a convergence to the outer appearance of the other gender. Gender confirmation operations are explicitly, not necessary.</i><sup>349</sup></p> </div> <p>The ruling against compulsory surgical interventions arises from a 2009 case before the Supreme Constitutional Court wherein it was stated that a “feeling of belonging [which] is in all likelihood irreversible and has been expressed in external terms by the person closely aligning their appearance to the external appearance of the opposite gender” is sufficient to validate gender marker change (<i>Verwaltungsgerichtshof, 2008/17/0054, appeal of MP</i>).</p>

<sup>346</sup> Original name: *Namensänderungsgesetz*.

<sup>347</sup> Original name: *Personenstandsgesetz*.

<sup>348</sup> Original text: *Die Personenstandsbehörde hat eine Eintragung zu ändern, wenn sie nach der Eintragung unrichtig geworden ist.*

<sup>349</sup> Source: [https://www.transx.at/Dokumente/FactSheet\\_TS.pdf](https://www.transx.at/Dokumente/FactSheet_TS.pdf)



# Azerbaijan

	<b>Name change</b>	Possible.
	Legislation	Article 4 of <i>The Law on Identification Card of the Citizen of the Republic of Azerbaijan 1994</i> <sup>350</sup>
	Quote/details	<p>Article 4. A natural person has a right to change their name in an order established by the law... The natural person who has changed their name has a right to demand changes in documents issued in their previous name at their own cost.</p>
		Azerbaijan operates a national identity card system, the “Law on Identification Card of the Citizen of the Republic of Azerbaijan” <sup>351</sup> (14 June 1994). The card can be modified if necessary. <sup>352</sup>
	<b>Gender marker change</b>	Not possible.
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Code of Administrative Offences. <sup>353</sup>
	Quote/details	<p>Article 308, Occupation in prostitution Entails imposition of penalty in amount of 35-40 minimum wages.</p> <p>Article 510, Hooliganism Minor hooliganism i.e. actions, which violate public order, but are not accompanied by use or intimidation of use of violence, in relation to natural persons, by obliteration or damage of other property- Entails imposition of penalty in amount of 15-25 manats, and if by circumstances of business with consideration of personality disturber, application of these measurements will be insufficient, - administrative arrest of up to 15 days.</p> <p>Article 535(1), Disobedience to Lawful Demand of a Police Officer<sup>354</sup> Persistent insubordination of legal request of policeman or military man at execution by them of duties on protection of public order— Entails imposition on natural persons of penalty in amount of 20-25 manats, and if by circumstances due to personality of disturber the application of these measures will be considered insufficient, then administrative arrest for period up to 15 days will be applied.</p>
		[DE FACTO CRIMINALISATION]
	Legislation	Law on the Azerbaijan Fight Against Illness Caused by Human Immunodeficiency Virus, 2010 <sup>355</sup>
	Situation	There are no laws in Azerbaijan that <i>de jure</i> criminalise transgender and gender diverse people. However, numerous laws are used to target transgender people, particularly trans sex workers, <i>de facto</i> criminalising them.

<sup>350</sup> Source: <http://e-qanun.az/framework/9009>

<sup>351</sup> Original name: *Azərbaycan Respublikası vətəndaşının şəxsiyyət vəsiqəsi haqqında*.

<sup>352</sup> Source: [https://www.coe.int/t/Commissioner/Source/LGBT/AzerbaijanLegal\\_E.pdf](https://www.coe.int/t/Commissioner/Source/LGBT/AzerbaijanLegal_E.pdf)

<sup>353</sup> Translation of the *Code of Administrative Offences* to English has different article numbering than the Azerbaijani version. Article 510, Hooliganism is Article 296 in the English version and Article 535(1) *Disobedience to the Lawful Demand of a Police Officer* is Article 310(1) in the English version found here: [http://www.ombudsman.gov.az/upload/editor/files/Azerbaijan\\_Code%20on%20Administrative%20offences\\_2000\\_eng.pdf](http://www.ombudsman.gov.az/upload/editor/files/Azerbaijan_Code%20on%20Administrative%20offences_2000_eng.pdf)

<sup>354</sup> Titled in the English version- Persistent insubordination of legal request of policeman or military man.

<sup>355</sup> United Nations Office on Drugs and Crime, “New HIV Law in Azerbaijan”, <https://www.unodc.org/centralasia/en/news/new-hiv-law-in-azerbaijan.html>; Azerbaijani version available <http://parliament.gov.az/?/az/legislation/view/1630>

These laws are justified by the state on the grounds of public health and public order. Following countless raids on LGBTI premises and individuals in September 2017,<sup>356</sup> Eskhan Zakhidov, a spokesman for the Ministry of Internal Affairs stated, "These raids are not against all sexual minorities. The arrested are people who demonstratively show a lack of respect to those around them, annoy citizens with their behaviour, and also those whom police or health authorities believe to be carriers of infectious diseases."<sup>357</sup> Despite the state's denials, it is clear that these arrests are intended to spread fear through the LGBTI community.



### Examples

Nafas LGBT Azerbaijan Alliance have witnessed a pattern emerging from the arrest of transgender people in Azerbaijan. Often, authorities use Article 308, Occupation in Prostitution as justification at the point of arrest. However, in official charges documented later, sex work is not mentioned, but other offences under the Code of Administrative Offences, notably Articles 510 and 535(1). Nafas states that authorities arrest trans people on the grounds of 'Occupation in Prostitution' because the wider Azerbaijan public is hostile towards sex work and believe it is damaging to public health; it is easier for law enforcement to defend their actions citing public health issues rather than offences such as "obeying the lawful demand of an officer."<sup>358</sup>

The Law on the Azerbaijan Fight Against Illness Caused by Human Immunodeficiency Virus is used disproportionately against sex workers, or those perceived to be sex workers, who are considered by some parts of society to be the source and spread of HIV in the country. The Ministry of International Affairs uses HIV prevention policy to gain public support in Azerbaijan. It also gathers data to show the international community that they are working towards fighting the spread of HIV. Support from the wider public to tackle the spread of HIV leads to the continued arrest of sex workers, and those perceived to be engaging in sex work, including trans people.<sup>359</sup>

(See *Azerbaijan Case Study for details of raids targeting LGBTI people in 2017 and 2019*).

## AZERBAIJAN

Interview with **Cavid Nabiyev**, Nafas LGBT Azerbaijan Alliance, 9 August 2019.

### Overall situation for trans people in Azerbaijan

The situation for transgender people, and indeed all LGBTI people, in Azerbaijan is extremely hostile. Over the past few years there has been continuing discrimination, violence and spates of police raids targeting, arresting and charging members of the community.<sup>360</sup>

### Deprivation of liberty cases

On 15 September 2017, raids began to take place across Azerbaijan's capital Baku targeting LGBTI people in their places of work, in the streets and in

their homes.<sup>361</sup> It has been difficult to identify the exact number of people who were arrested, however, Nafas estimated over 100.<sup>362</sup> Samed Rahimli, a Baku-based lawyer, stated that he was aware of 60 cases of LGBTI people who were sentenced and charged during the crackdown.<sup>363</sup> The Minister of Internal Affairs, Ramil Usubov, admitted that there had been 83 cases of administrative detention of LGBTI people, but claimed they were not arrested on the basis of their sexual orientation or gender identity, but because of criminal acts they had committed.<sup>364</sup>

<sup>356</sup> See Azerbaijan Case Study.

<sup>357</sup> Shaun Walker, "Outcry as Azerbaijan police launch crackdown on LGBT community" The Guardian, 28 September 2017, <https://www.theguardian.com/world/2017/sep/28/azerbaijan-police-crackdown-lgbt-community>

<sup>358</sup> Interview with Cavid Nabiyev, Nafas LGBT Azerbaijan Alliance, 9 August 2019.

<sup>359</sup> Ibid.

<sup>360</sup> Elnur Karimov, *The repressions against the LGBTIQ+ individuals in Azerbaijan between 2016-2018: Reasons and solutions for the attacks against the LGBTIQ+ individuals from multiple sides*, (Nafas); ILGA: Lucas Ramon Mendos, *State Sponsored Homophobia 2019: Manon Beury and Yury Yoursky, 'Europe- Increased Visibility, Populist Backlash and Multiple Divisions'* (Geneva; ILGA, March 2019), p. 149.

<sup>361</sup> Ibid.

<sup>362</sup> Cavid Nabiyev, *Police raids against gays and transsexuals in Azerbaijan* (Report I, September 2017), p. 2.

<sup>363</sup> Elnur Karimov, *The repressions against the LGBTIQ+ individuals in Azerbaijan between 2016-2018*.

<sup>364</sup> Ibid.

The Ministry of Internal Affairs circulated that citizens had complained that people with non-traditional sexual orientation were engaging in illegal sex work, a crime under Article 308 of the Code of Administrative Offences. Contrary reports suggested that the police were in fact targeting anyone whose appearance did not correspond with “national traditional values.”<sup>365</sup>

After one day in detention, detained persons were subject to “compulsory medical examinations”<sup>366</sup> supposedly under powers arising from the Law on the Fight Against Illness Caused by HIV. Article 11.3 states that “*medical examination to persons living with HIV cannot be accomplished by physical, psychological or moral pressures.*” Further, Article 16 states that where a person refuses a medical examination, a compulsory one can be ordered “by a court in the manner prescribed by law.”

Despite the fact that “compulsory medical examinations” must be authorised by court order, Nafas reported that none were shown to detainees prior to the examinations.<sup>367</sup> In addition to the examinations being conducted without the correct authority, the official report on the arrests and charges did not mention the examinations at all.<sup>368</sup> Moreover, on 24 September 2017, the Ministry of Health’s Centre for Combating AIDS – the official centre for conducting medical examinations in Azerbaijan – reported that it did not receive any persons for medical examinations during that time. It is unknown whether the place that received

detainees and examined them had the right to engage in such practices under Article 11.

As well as the forced examinations, detainees were also subject to beatings, verbal abuse and transgender women’s heads were forcibly shaven. At least two of the victims reported at the appeals hearing that electric shock was applied to them. At the appeals hearing (which heard 34 cases) almost all of the victims’ hair had been shaven, including that of trans women.<sup>369</sup>

It was also difficult for lawyers and organisations to speak to the detainees to discuss their cases – only one lawyer was able to access 10 detainees for short “confidential” meetings in the detention facility.<sup>370</sup>

In October 2017, 11 gay and transgender people were arrested in Baku and released after a few hours.<sup>371</sup>

The European Court of Human Rights began communicating on 25 complaints relating to these incidents in March 2019. The decisions are pending.

In April 2019, more arrests of transgender people were made. Nafas reported the detention and fining of at least 14 people under the *Code on Administrative Offences*.<sup>372</sup> Of the five identified victims, two were fined under Article 510<sup>373</sup> and three under Article 535(1).<sup>374</sup> Two people were sentenced to 10 days of administrative detention and another to 15 days. The victims were held in a centre intended for 48 to 96 hours detention, not suitable for 10 or more days of detention.<sup>375</sup>

<sup>365</sup> Cavid Nabiyev, *Police raids against gays and transsexuals in Azerbaijan*.

<sup>366</sup> *Ibid.*, p. 3.

<sup>367</sup> Interview with Cavid Nabiyev, 2019.

<sup>368</sup> *Ibid.*

<sup>369</sup> Javid Nabiyev and Samed Rahimli, ‘Police raids against gay and transsexuals in Azerbaijan’ (Report II, October 2017).

<sup>370</sup> *Ibid.*

<sup>371</sup> Javid Nabiyev, ‘Situational Analysis’ (Report III, 2017).

<sup>372</sup> Interview with Cavid Nabiyev, 2019.

<sup>373</sup> Hooliganism.

<sup>374</sup> Disobedience to Lawful Demand of a Police Officer.

<sup>375</sup> Interview with Cavid Nabiyev, 2019.












# Belarus

	<b>Name change</b>	Possible, unclear procedure.
	Legislation	Civil Code of Belarus.
	Quote/details	<p>Article 18.2.</p> <p><i>A citizen shall have the right to change his name in accordance with the procedure established by legislation. The change of name by a citizen shall not be grounds for the termination or change of his rights and duties acquired under the previous name. [...]</i></p> <p><i>A citizen who has changed name shall have the right to demand the making, at his expense, of respective changes in documents formalized in his previous name.</i></p>
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	Legislation	On some issues of gender change and correction, December 9, 2010 No. 163. <sup>376</sup>
	Conditions for gender marker change	<p>Applications are considered by the “Interdepartmental Commission for medical, psychological and social rehabilitation of persons with Gender Identity Disorder of the Ministry of Health of the Republic of Belarus.” The Commission hears applications and votes on whether to grant the change.</p> <p>The applicant must undergo “a comprehensive medical and psychological examination, necessary to exclude other sexual, mental and somatic disorders”. This includes psychiatric, psychological, endocrinological, gynaecological/urological, and genetic testing. The applicant must be medically monitored for a year before they can access a Commission hearing.</p>

<sup>376</sup> Original name: *О некоторых вопросах изменения и коррекции половой принадлежности.*



# Belgium







	<b>Name change</b>	Possible, within the gender marker change process.
	Legislation	<i>Loi du 15 mai 1987 relative aux nom et prénoms</i> as amended by the 2017 <i>Loi réformant des régimes relatifs aux personnes transgenres</i> .
	Quote/details	<p><b>Article 2.3.</b></p> <p><i>Any person who is convinced that the sex mentioned in his or her birth certificate does not correspond to his or her closely lived gender identity shall attach to his or her application a declaration on his or her honour in this regard. The forename chosen must be in accordance with this conviction. Without prejudice to paragraph 6, a change of forename may be requested only once for this reason, except where the change of forename is authorised by the Family Court after a further amendment of the sex registration.</i></p> <p><i>An unemancipated minor may request the change of his or her forename for this reason from the age of 12, with the assistance of his or her parents or legal representative.</i></p> <p>Name change is possible as part of the gender marker change process. The forename chosen must conform to the person's averred gender. A forename can only be changed once for this reason, except if the Family Court authorises a second change after a new modification of legal sex. A non-emancipated minor can change their forename for this reason from the age of 12, assisted by their parent or legal counsel.</p>
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	Legislation	<i>10 Mai 2007 Loi relatif à la transexualité</i> , Chapitre 2, Article 2, as amended by the <i>25 Juin 2017 Loi réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets</i> .
	Quote/details	Article 2 Article 62 bis of the same [Civil] Code, inserted by the Law of 10 May 2007, is replaced by the following: "Article 62bis. § 1. Any adult Belgian, emancipated minor, or foreigner resident in Belgium who has the conviction that the sex written on their birth certificate does not correspond to their innately felt gender identity, can make a declaration of such to the civil status officer.
	Conditions for gender marker change	<p>There are conditions in place on this procedure. There is a three-month period where the public prosecutor can refuse the application for public order reasons. (Art 3.3) After 3 months but before 6 months, the applicant must return to the civil status registrar and again state that they still believe that their gender identity does not correspond to what is on their birth certificate; they are aware of the administrative and legal consequences of changing their birth certificate; and that they are aware of the irrevocable nature of change to the birth certificate. (Art 3.5) A non-emancipated minor aged 16 or 17 can make an application to have their registered sex changed provided they supply a statement from a child psychiatrist stating that they have the necessary capacity to have the "lasting conviction" that their gender identity does not correspond to their registered birth certificate. The minor must be assisted by their parents or guardian. (Art 3.11)</p> <p>Recent developments: medical requirements for legal gender recognition were removed from Belgian law as of January 1, 2018. In June 2019, a constitutional challenge was presented to the law on the grounds that limiting recognition solely to binary gender choices was unconstitutional for equality reasons. The challenge was upheld.<sup>377</sup> The law has been partially annulled, but applications are still possible as at August 2019.<sup>378</sup></p>

<sup>377</sup> Arret 99/2019, <https://www.const-court.be/public/f/2019/2019-099f.pdf>

<sup>378</sup> Source: [https://justitie.belgium.be/nl/themas\\_en\\_dossiers/personen\\_en\\_gezinnen/transgendere](https://justitie.belgium.be/nl/themas_en_dossiers/personen_en_gezinnen/transgendere)



## Bosnia and Herzegovina

	<b>Name change</b>	Possible, and mentions gender marker change process.
	Legislation	<i>Law on Personal Name (FBiH Official Gazette No. 7/12).</i> <sup>379</sup>
	Quote/details	<div data-bbox="756 461 1422 667" style="border: 1px solid #ccc; padding: 5px;"> <p>Article 9. Every person has the right to change the name, or the name or last name only, except in cases that is otherwise provided by this law.</p> <p>A person may change the personal name or the name or surname only after the change of the family or personal status (adoption, recognition and establishment of paternity or maternity, marriage, dissolution of marriage - divorce or annulment of marriage, death of a spouse or a declaration of a deceased spouse, changes gender) or at their own request.</p> </div> <p>Medical or surgical interventions should not be necessary for a name change procedure, but the source warns that “(p)ractice in regard to transgender individuals and a change of name is not known as it has never been reported. It may be possible that such changes are not allowed, due to social insensitivity.”<sup>380</sup></p>
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	Legislation	Article 12 of the <i>Law on Registry Books</i> <sup>381</sup> provides for “change of sex” among data which can be entered in the Register of Births. <sup>382</sup>
	Conditions for gender marker change	<p>For gender reassignment, only after the whole process has been completed, is it possible to apply for change of gender marker in all official documents including, primarily, the identification number (JMB). The identification number consists of 13 digits. The first seven specify the date of birth, the following two specify a region (10-19 is for Bosnia and Herzegovina, 17 being for Sarajevo, for example), the following three stand for person’s sex and registered number in the Birth Registry (000-499 for males and 500-999 for females), and the last number is the control number. Upon change of sex, the JMB is changed. In order for a personal JMB to change, the relevant medical documentation needs to be submitted by a doctor or medical team. Medical documentation can also mean a document specifying that gender reassignment and full transition have been completed and achieved.</p> <p>The same procedure is used when a gender marker has been written wrongfully by mistake. These procedures are of an administrative nature and do not involve court proceedings.</p> <p>Transgender persons who do not want to undergo gender reassignment procedure should still be able to change their name, but not their documents nor their identification number.<sup>383</sup></p>

<sup>379</sup> Original name: *Zakon o ličnom imenu FBiH (Službene novine FBiH broj 7/12).*

<sup>380</sup> Source: [http://www.coe.int/t/Commissioner/Source/LGBT/BosniaHerzegovinaLegal\\_E.pdf](http://www.coe.int/t/Commissioner/Source/LGBT/BosniaHerzegovinaLegal_E.pdf)

<sup>381</sup> Original name: *Zakon o Matičnim Knjigama Republike Srpske.*

<sup>382</sup> Source: [http://www.coe.int/t/Commissioner/Source/LGBT/BosniaHerzegovinaLegal\\_E.pdf](http://www.coe.int/t/Commissioner/Source/LGBT/BosniaHerzegovinaLegal_E.pdf).

<sup>383</sup> Ibid.



# Bulgaria

	<b>Name change</b>	Possible.
	Legislation	Civil Registration Act, Article 19.
	Quote/details	<p>Article 19(1). A change in the first, middle or last name of a person is accepted by the court based on the written request of the principal, where the name causes ridicule or disgrace, or is publicly unacceptable, and where important circumstances require.</p>
		<p>Gender must be therefore included in “important circumstances” by the court decision. For a trans person, legal change of forename is dependent on the court deciding in favour of their application for gender marker change. However, it is not possible to change surname, and as Bulgarian surnames have gendered suffixes, this may be seen as insufficient.</p>
	<b>Gender marker change</b>	Possible, with unclear requirements.
	Legislation	Law on Bulgarian Personal Documents (SG. 82 of 2009). <sup>384</sup>
	Quote/details	<p>Article 9. (amend. - SG. 82 of 2009) (1) Where there is a change in the names, personal identification number, gender, nationality, or substantial and permanent changes in facial image of a person, they are obliged to submit an application for a new Bulgarian identity documents within 30 days.</p>
		<p>Rules and Regulations for Issuing Bulgarian Personal Documents.</p>
		<p>Article 20. When changing an identity card, the application shall be accompanied by:</p> <ul style="list-style-type: none"> <li>3. upon change of the names - official document certifying the change, as well as a certificate from the respective municipal administration on the permanent address of the person for the change made in his personal registration card in the cases when the change is not reflected in the National Population Database;</li> <li>5. in case of substantial and lasting changes of the image - official document from the relevant competent authorities;</li> <li>6. in case of gender change - an official document from the respective competent authorities;</li> </ul> <p>Article 20. (6) When changing a passport, the following shall be attached to the application:</p> <ul style="list-style-type: none"> <li>3. upon change of the names - official document certifying the change, as well as a certificate from the respective municipal administration on the permanent address of the person for the change made in his personal registration card in the cases when the change is not reflected in the National Population Database;</li> <li>5. in case of gender change - an official document from the respective competent authorities.</li> </ul>
	<b>Conditions for gender marker change</b>	<p>Gender marker change is sought via the courts. The court will seek expert opinions as to the application, from medical professionals including a sexologist, a psychologist, and a psychiatrist. A January 2017 decision of the Supreme Court of Cassation states that: "...individuals cannot be obliged to undergo a surgical intervention to modify their body without their consent as a prerequisite for changing legal sex/gender marker and the court accepts without protest the appeal against the decision and the presented court practice." However, the Court underlines that "On the other hand, the claimant who alleges transsexuality needs to prove before the court their serious and unwavering intent to biologically affirm the role they perform psychically and socially. Therefore, it is required that at least a hormone</p>

<sup>384</sup> Original name: *Zakon za Balgarskite lichni dokumenti.*

replacement therapy for sex transitioning has been initiated /such has been ascertained in the majority of the court decisions granting a change of sex, as put forth in support of the appeal.”

The court process is lengthy, and applicants may find this prohibitive.<sup>385</sup>

**Note:** currently all of this is unclear or possibly outdated entirely due to the Constitutional Court's ruling in Case 3/2018 (promulgated SG No. 65 of 07/08/2018).<sup>386</sup> This case concerned the constitutionality of the Istanbul Convention on Violence Against Women. It was contended that the Convention would be unconstitutional under Bulgarian law due to its “concepts that are incompatible with the Bulgarian public order and unknown in our national legal system, and the content contained in the provisions of the Convention is different from the conventional and traditional ones”. Furthermore, the petitioners had concerns relating to “the provisions of Art. 3, b. “C”, Art. 12, § 1 and Art. 14, § 1 of the Convention and the terms used therein: “... “Socially constructed roles”, “stereotyped roles”, as well as the term “gender” as objective elements of the content of the concept of “gender” ...”, in the sense of being compatible with the Constitution, including the provision of Art. 46, para. 1 of the Basic Law in the context of defining “third sex” and creating the possibility of same-sex marriage.”

The Constitutional Court took issue with “the link between the Council of Europe's policy of preventing and combating violence against women, as a form of gender discrimination and the protection of certain transgender rights.”

They found that “[t]he concept of ‘gender’ is present in the Convention as a separate category other than gender as a biological entity. The Convention divides the biological and social dimensions of gender and goes beyond the gender binary view of the human species. In accordance with Art. 3, ‘gender’ becomes a basic, conceptual term which is decisive for the meaning of the other terms used in the Convention... Although not specifically regulating the rights of “transgender” people, the Convention is the first international treaty signed by the Republic of Bulgaria, which explicitly includes the feature “identity based on sex” in art. 4, § 3 as a ground for non-discrimination... Given the lack of a definition of gender identity in the Convention, its content should be understood... in the light of Council policy of Europe for the protection of certain transgender rights.”

However, the Court stated that “[t]he constitution and all Bulgarian legislation is based on the understanding of the binary existence of the human species... [In] Art. 47, para. 2 of the Basic Law (Constitution) the biological sex “woman” is associated with its social role - “mother”, “birth”, “obstetric care”. In short, the term gender is used by the constitutional legislator as both that which is biologically determined and socially constructed. The social dimension of the Constitution does not create a sex-independent gender, as provided for in the Convention.” Using this rationale, the Court went on to find that “[t]he requirements of Art. 4, § 3 of the Convention would require the Republic of Bulgaria to establish procedures ensuring the legal recognition of sex other than that which is biological, contrary to the Constitution.”

As such, gender marker change would appear to be unconstitutional. ILGA Europe's 2018 review of Bulgaria<sup>387</sup> stated that soon after Case 3/2018, a trans woman's legal gender recognition application was rejected. However, the reasoning of the Constitutional Court in 3/2018 also seemed to reject same-sex marriage, yet in 2019 they recognised a same-sex marriage conducted in France as valid in Bulgarian law.<sup>388</sup> The situation remains unclear.

<sup>385</sup> Source: *Transrespect versus Transphobia Worldwide* project (TvT), TGEU.

<sup>386</sup> Source: <http://constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310>

<sup>387</sup> ILGA Europe, Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People in Bulgaria covering the period of January to December 2018

<sup>388</sup> Source: <https://portermedium.com/2019/07/bulgarian-court-approves-same-sex-marriage-in-groundbreaking-case-that-could-lead-to-marriage-equality>



# Croatia

	<b>Name change</b>	Possible.
	Legislation	Urbroj/Regulation 71-05-03/1-12-2, Law on Personal Name. <sup>389</sup>
	Quote/details	Article 6. Every person has the right to change their personal name.
	<b>Gender marker change</b>	Possible, with unclear requirements because of inconsistency.
	Legislation	Urbroj/Regulation: 534-10-1-2-1/2-14-10. Ordinance on collection of medical documents and establishing conditions for change of gender and life in another gender identity. <sup>390</sup>
	Conditions for gender marker change	<p>Article 2.2: No person shall be forced to undergo medical procedures, including "gender reassignment surgery", sterilization, or hormonal therapy, as a condition for recognition of change of sex or living in a different gender identity.</p> <p>Article 3: (1) The applicant for the issuance of the decision on registration of change of sex in the register of births, shall attach to the application the Opinion of the National Health Council on the change of sex or about life in a different gender identity (hereinafter: Opinion of the National Health Council).</p> <p>(2) The Opinion of the National Health Council is a document based on which the competent state administration office in the county issues a decision on registration of sex change in births.</p> <p>(3) An application for the opinion of the National Health Council is printed on the form contained in Annex I to this Ordinance and forms an integral part.</p> <p>Article 4: (1) By application of Article 3, paragraph 3 of this Ordinance, the applicant is required to attach medical documentation and opinions, which are prescribed by this Ordinance.</p> <p>(2) If the applicant is an adult, is required by the request to submit the following medical records:</p> <ul style="list-style-type: none"> <li>- Opinion / finding from a medical doctor specialized in psychiatry,</li> <li>- Opinion / finding from a medical doctor specialized in endocrinology and diabetology,</li> <li>- Opinion from a clinical psychologist; and a report from the competent social welfare center on the person's personal and family circumstances.</li> </ul> <p>(3) If the applicant is a child, the parents or guardian of the child is required to submit the following medical records:</p> <ul style="list-style-type: none"> <li>- Opinion / finding from a medical doctor specialized in child and adolescent psychiatry,</li> <li>- Opinion / finding from a medical doctor specialized in pediatric endocrinology,</li> <li>- Opinion / finding from a medical doctor specialized in pediatrics,</li> <li>- Opinion from a clinical psychologist with experience in the field of child psychology, and the report of the competent social welfare center on the child's personal and family circumstances.<sup>391</sup></li> </ul>

<sup>389</sup> Original name: Urbroj/Regulation: 71-05-03/1-12-2. Prolašenju Zakona o Osobnom Imenu.

<sup>390</sup> Original name: Pravilnik o Načinu Prikupljanja Medicinske Dokumentacije te Utvrđicanju Uvjeta i Pretpostavki za Promjenu Spola Ili o Životu u Drugom Rodnom Identitetu.

<sup>391</sup> Source: [http://narodne-novine.nn.hr/clanci/sluzbeni/2014\\_11\\_132\\_2487.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2014_11_132_2487.html).



# Cyprus

	<b>Name change</b>	Possible, as part of gender marker change procedure.
	<i>Legislation</i>	<i>Civil Registry Law, No. 141(I) of 2002 (as explained below.)</i>
	<b>Gender marker change</b>	Not possible, although reports are that a Bill is being considered. <sup>392</sup>
	<i>Legislation</i>	<i>Civil Registry Law, No 141(I) of 2002.</i>
	<i>Quote/details</i>	<p><i>Article 40(1). For the purposes of this section, "amendment" includes the correction of errors, addition, a new name or change of name, or the change of name and sex simultaneously, and annulment of any registration.</i></p> <p><i>(4) The amendments shall be certified by any means decided by the Registrar, as prescribed by Regulations. The date of authentication shall be entered in the Registry.</i></p>
	<i>Conditions for gender marker change</i>	<p>Conflicting information exists with regard to gender marker change in Cyprus. The Civil Registry Law theoretically permits it. 2016 reports from Amnesty International and the US State Department cite in-country activists as saying that there is no law on legal gender change. Meanwhile, the European Commission Against Racism and Intolerance (ECRI) published a 2016 report on Cyprus which states that gender marker change is possible; however, this seems to be based on outdated information.<sup>393</sup></p>

<sup>392</sup> Source: <http://www.acceptcy.org/en/node/9446>

<sup>393</sup> Sources: Amnesty International, *Report 2015/16 - Cyprus*; United States Department of State, *2016 Country Reports on Human Rights Practices - Cyprus*; ECRI, *Report on Cyprus (fifth monitoring cycle) CRI (2016)18*.



# Czechia

	<b>Name change</b>	Possible, specifically includes legal gender recognition.
	Legislation	Act on registers, names and surnames and amending certain related laws, No. 301/2000.
	Quote/details	<p>(1) The name or names, or surnames or multiple surnames that natural person is obliged to use, you can change an individual solely on the basis of its application or request of their legal representatives</p> <p>(5) The registry office, on the application of the person and confirmation from the healthcare provider, can change the name or surname to:</p> <p>(a) A neutral name, where they are initiating treatment for a sex change, or</p> <p>(b) A different name, or name and surname, if therapy for sex reassignment has been completed.</p> <p>Requests to change name and surname after sex change will be registered in accordance with the Czech rules of grammar in the form according to the new gender.</p>
	<b>Gender marker change</b>	Possible. <sup>394</sup>
	Legislation	§ 29 of Act No. 89/2012 Coll., Civil Code (2014).
	Quote/details	<p>Change of gender</p> <p>(1) The gender reassignment is accomplished by a surgical operation involving the termination of reproductive function and a genital reconstruction surgery. The date stated on the certificate issued by the health service provider is considered to be the date of the administrative gender change.</p> <p>Also: Act No. 301/2000 Coll. § 17a, Act on Registries, Name and Surname and on Amendment of Some Related Acts</p> <p>An additional record of the sex change shall be made in the birth record on the basis of a certificate issued by the health service provider, who shall notify the registry office within 3 working days of the date of the sex change. The date of gender change is the date on this confirmation.<sup>395</sup> The Ministry shall specify the model confirmation of the health service provider of the commencement and termination of treatment for gender change by means of an implementing legal regulation.</p>
	Conditions for gender marker change	As above - trans individual must have undergone sterilisation surgery. Surgery is available to adults on written application and with approval from an expert committee of medical professionals. <sup>396</sup>

<sup>394</sup> Source on Czechia: <http://hudoc.esc.coe.int/eng?i=cc-117-2015-dmerits-en>







<sup>395</sup> Source: <https://www.zakonyprolidi.cz/cs/2000-301#f5090794>

<sup>396</sup> Act on Specific Health Services (2011), No.373/2011, §21-23





# Denmark

	<b>Name change</b>	Possible, specifically mentions legal gender recognition.
	<b>Legislation</b>	Navnelov 524/2005, Article 13.2/13.3.
	<b>Quote/details</b>	<p>§ 13. As the name may be a name that is entered in the list mentioned in § 14 paragraph. 1, or as authorized by § 14 paragraph.</p> <p>PCS. 2. A name may not denote the opposite sex compared to the one that will bear the name.</p> <p>PCS. 3. The Minister of Social Affairs and the Interior shall make further rules regarding persons who are transgender or are to be treated as such, who are not subject to the rule in paragraph 2.</p>
	<b>Gender marker change</b>	Possible.
	<b>Legislation</b>	Lov 752/2014. Motion to Amend the Act on the (Danish) Civil Registration System <sup>397</sup> (Granting a new social security number to people who experience themselves as belonging to the opposite gender).
	<b>Conditions for gender marker change</b>	<p>No medical/psychological requirements; it is an administrative procedure.</p> <p>Article 1. The Act on the Civil Registration System cf. the consolidation Act no.5 of 9 January 2013... is amended as follows: [...]</p> <p>After a written application, The Economy and Domestic Ministry will allocate a new social security number to persons who experience themselves as belonging to the opposite gender.</p> <p>Allocation of a new social security number is condition by submission of a written declaration stating that the application is based on a sense of belonging to the opposite gender.</p> <p>After a reflection period of 6 months from the application date, the applicant has to confirm the application in writing. It is furthermore a condition that the applicant is 18 years old at the time of the submission of the application.</p> <p>Denmark will also allow applicants to receive a passport with the gender marker 'X' (§ 2).</p>

<sup>397</sup> Original name: Lov 752/2014 Lov om ændring af lov om Det Centrale Personregister.



# Estonia







	<b>Name change</b>	Possible, specifically legal gender recognition-friendly.
	Legislation	Names Act, <sup>398</sup> passed 15.12.2004.
	Quote/details	<p>Division One, Article 15.</p> <p>§ 15. Assigning new personal name due to change of gender of person.</p> <p>(1) If the gender of a person is changed, a vital statistics office may, on the basis of a written application of the person, the parent of the minor or the guardian of the minor ward, assign a new given name to the person and change the foreign-language surname of the person if gender is reflected in the surname pursuant to the national tradition of the person. [RT I 2010, 1, 1 - entry into force 01.07.2010]</p> <p>(2) Upon assigning a new given name, the requirements and restrictions provided for in § 7 of this Act shall be complied with.</p>
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	Legislation	General Requirements on Medical Procedures for the Change of Gender (Adopted 07.05.1999 No. 32). <sup>399</sup>
	Conditions for gender marker change	<p>Medical intervention/surgery is required.</p> <p>Article 1. The following measures are required. The person must make a statement to the Ministry of Social Affairs. A decision is made by a medical expert committee of the Ministry.</p> <p>Article 2. The Committee's decision requires the following factors:</p> <ul style="list-style-type: none"> <li>- Two years of 'transgender identity' previous to making the decision</li> <li>- A psychiatrist's report</li> <li>- "Genetic and chromosomal studies"</li> </ul> <p>Article 3. Medical treatment may begin once the applicant has the Ministry of Social Affairs decree. Surgical procedures must wait a year after the decree.</p>

<sup>398</sup> Original name: *Nimeseadus*.

<sup>399</sup> Original name: *Soovahetuse arstlike toimingute ühtsed nõuded*.



# Finland

	<b>Name change</b>	Possible.
	Legislation	Name Law 9.8.1985/694, <sup>400</sup> Chapter 6, Section 32.
	Quote/details	Application to be made to the area magistrate. Finland operates a gendered naming practice.
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	Legislation	Act on legal recognition of the gender of transsexuals, No. 563/2002. <sup>401</sup>
	Conditions for gender marker change	<p>Section 1. Preconditions for legal recognition.</p> <p>A person can be legally recognised to belong to the gender opposite to that according to which he or she is recorded in the population information system referred to in the Population Information Act (507/1993) if he or she:</p> <p>(1) presents a medical statement stating that he or she permanently feels to belong to the gender opposite to that assigned to him or her and lives in that gender role, and that he or she has been sterilised or is for some other reason infertile;</p> <p>(2) is of age;</p> <p>(3) is not married or living in a registered partnership; and</p> <p>(4) is a Finnish national or has his or her place of residence in Finland.</p> <p>Section 2. Exemption from the preconditions for legal recognition.</p> <p>(1) Notwithstanding the provisions of section 1(1)(3) a person who is married or lives in a registered partnership can be legally recognised to belong to the gender opposite to that according to which he or she is recorded in the population information system, if the married spouse or the other partner in the registered partnership has, after the Local Register Office has given him or her an account of the circumstances referred to in subsection 2, personally given the Register Office his or her consent to that.</p> <p>(2) When belonging to a gender is legally recognised in a case referred to in subsection 1, marriage will be converted, without any separate measures, into a registered partnership and registered partnership into marriage.<sup>402</sup></p>








<sup>400</sup> Original name: *Nimilaki*.

<sup>401</sup> Original name: *Laki transseksuaalin sukupuolen vahvistamisesta*.

<sup>402</sup> Translation from here: <http://www.finlex.fi/fi/laki/kaannokset/2002/en20020563.pdf>.



## France

	<b>Name change</b>	Possible.
	Legislation	Civil Code, Arts. 60 and 61.
	Quote/details	Any person with a “ <i>interet légitime</i> ” can apply to the Family Courts to have their name changed. It is also possible to go through a notary public process, although this does not have the same effect over all documents as a decree by the courts. It can, however, speak to the applicant’s seriousness about their application.
	<b>Gender marker change</b>	Possible.
	Legislation	Law on 21 <sup>st</sup> Century Justice. <sup>403</sup>
	Quote/details	<p>Article 56, amending Article 61 of the Civil Code.</p> <div style="border: 1px solid #ccc; padding: 5px;"> <p><i>Art 61-5 Any adult or emancipated minor can make an application to have their gender corrected in the actes de l'état civil (civil registry). They must demonstrate sufficient facts to support their claim: this can include that they appear publicly to belong to the affirmed gender; that they are known in that gender to family, friends, and colleagues; that they have changed their forename to one of the affirmed gender.</i></p> <p><i>Art 61-6 The application is brought before the TGI. The applicant must declare her free and informed consent to the change of documents and bring any necessary supporting evidence. Not having undergone medical treatment, surgery, or sterilisation cannot be bars to the change. The decision-maker confirms that the applicant satisfies the conditions in 61-5 and orders the modification of the information in the actes de l'état civil.</i></p> <p><i>Art 61-7 A note is to be made of the change of gender and, if necessary, of forename, in the margin of the applicant’s birth certificate within 15 days of the judgment, at the request of the Procureur de la République.</i></p> </div>
	Conditions for gender marker change	As detailed above.

<sup>403</sup> Original name: *La loi sur la justice au XX1eme siècle.*




# Georgia

	<b>Name change</b>	Possible.
	Legislation	Law of Georgia on Civil Status Acts, Article 78.
	Quote/details	<p>Article 78. It is possible to change a name for reasons including: (G) a sex change - if a person wants a sex change of name and / or surname.</p>
	<b>Gender marker change</b>	Nominally possible.
	Quote/details	<p>In Georgia, legal recognition of gender is regulated based on Article 78(g) of the <i>Law of Georgia "on Civil Acts"</i>, which states that changing a sex is one of the grounds for amending a civil act record. Yet, the Law does not define what is implied under changing a sex. In response to the following questions—what does the law imply under changing a sex; which documents must be submitted to amend a person’s civil act record in respect of sex, name and/or surname; and which concrete civil acts could be amended in respect of sex, name and/or surname—the State Services Development Agency provided the following explanation:</p>
		<p><i>"An amendment referred to in Paragraph "g" of Article 78 of the Law of Georgia "on Civil Acts" can be made based on a medical certificate issued by a medical institution, which confirms change of a sex by a person. The birth, father's identification and death act records include a column for denoting a sex. Accordingly, if a person submits the document confirming change of a sex, the civil acts registration authority will make a relevant amendment to the above-mentioned civil act records on the person, and in case of changing a name and/or surname—in all registered civil act records available on the person".</i><sup>404</sup></p>
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Administrative Offences Code of Georgia 1984. <sup>405</sup>
	Quote/details	<p>Chapter 13: Administrative Offences Involving Violations of Public Order</p> <p>Article 166. Disorderly conduct</p> <p><i>Disorderly conduct- swearing in public places, harassment of citizens or similar actions that disrupt public order and peace of citizens- shall carry a fine of GEL 100 or... an administrative detention of up to 15 days may be imposed.</i></p> <p>Chapter 14: Administrative Offences Violating the Established Rule of Governance</p> <p>Article 173, <i>Non-compliance with a lawful order or demand of a law-enforcement officer, military service person, officer of the Special State Protection Service or enforcement police officer or commission of any other illegal act against such person.</i></p>
		[DE FACTO CRIMINALISATION]
	Situation	<p>Trans people are not explicitly, <i>de jure</i>, criminalised in Georgia, however prejudice and discrimination leads to disproportionate numbers of trans people being targeted and charged under certain articles of the <i>Administrative Offences Code</i> (<i>de facto</i> criminalisation).</p> <p>LGBTI people also face barriers to accessing justice and feel unable to report crimes committed against them because of the fear of forcible 'coming out' and secondary victimisation. Prejudices and stereotypes of police officers, particularly towards trans sex workers – who experience</p>

<sup>404</sup> Source: Women's Initiatives Supporting Group (WISG), *Discrimination and Hate Crime against LGBT Persons*, Tbilisi, 2015.

<sup>405</sup> Administrative Offences Code of Georgia 1984. <https://matsne.gov.ge/en/document/download/28216/341/en/pdf>

	<p>physical abuse, trans/homophobic attitudes and degrading or humiliating treatment – still remains problematic.<sup>406</sup></p>
	<p><b>Examples</b></p> <p>In 2016, Women’s Initiative Supporting Group (WISG) reported six cases where transgender women were arrested under Articles 166 and 173 of the <i>Administrative Offences Code</i>.<sup>407</sup> All six were instances where the women were victims of hate crimes and had called the police to report them. On reporting, the victims themselves were arrested.</p> <p>In another case of 13 June 2016, two transgender women were attacked by a group of unknown men and driven to an area where petrol was poured over them with the intention of setting them on fire. The women were able to escape. When they called the police they were arrested and found guilty under Article 166 of the Code (disorderly conduct).<sup>408</sup></p> <p>In 2017, three cases were reported of transgender women being arrested under the Code.<sup>409</sup> Once more, in two of these cases, the women had been victims of transphobic hate crime. In the third case, the woman arrested reported that it was purely on the basis of the transphobic and homophobic prejudices of the police, not based on her actions.</p> <p>Trans women who are sex workers are often victims of unlawful detention. Arrests generally take place around so-called “Pleshka” (gathering point of sex workers). Frequently, when trans sex workers report homophobic/transphobic incidents against them to law enforcement, Articles 166 and 173 are cited to arrest the trans sex worker instead of the culprit.<sup>410</sup></p> <p>Illegal detention or arrest, which is a crime according to Georgian legislature,<sup>411</sup> was revealed in a number of cases litigated by Women’s Initiatives Supporting Group in 2017. However, in all cases, the victims did not want to take further action because the police “may treat them worse.”<sup>412</sup></p>

<sup>406</sup> Independent Expert on Violence and Discrimination based on Sexual Orientation and Gender Identity, *Mandate of the United Nations Independent Expert on Violence and Discrimination based on Sexual Orientation and Gender Identity, Country visit to Georgia- 25 September to 5 October 2018*, Tbilisi, 5 October 2018. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23682&LangID=E>

<sup>407</sup> Women’s Initiatives Supporting Group (WISG), *Unidentified Violence: Litigation Report* (Tbilisi, 2017), pp. 130-135. [https://women.ge/data/docs/publications/WISG-Unidentified\\_Violence\\_2017.pdf](https://women.ge/data/docs/publications/WISG-Unidentified_Violence_2017.pdf)

<sup>408</sup> *Ibid.*, p. 132.

<sup>409</sup> Ketevani Bakhtadze, Ekaterine Aghdgomelashvili (eds.) *Intersectional Discrimination and LGBTI People - Litigation Report* (Women’s Initiatives Supporting Group, 2018) [https://women.ge/data/docs/publications/WISG-LGBTI-Persons-and-intersectional-discrimination\\_WISG\\_2018\\_GEO&ENG.pdf](https://women.ge/data/docs/publications/WISG-LGBTI-Persons-and-intersectional-discrimination_WISG_2018_GEO&ENG.pdf)






<sup>410</sup> *Ibid.*

<sup>411</sup> Article 147, *Criminal Code of Georgia*.

<sup>412</sup> Ketevani Bakhtadze, Ekaterine Aghdgomelashvili, 2018.



# Germany





	<b>Name change</b>	Possible. Conditions detailed in Section 1(1) of the TSG apply.
	<b>Gender marker change</b>	Possible.
	<i>Legislation</i>	<i>Law on the Alteration of Forenames and the Determination of Sex in Especial Cases (Transsexual Law), 1981, as amended.</i> <sup>413</sup>
	<i>Quote/details</i>	Since the Federal Constitutional Court decision 1 BvR 3295-07 of 2011, requirements for LGR and name change are the same.
	<i>Conditions for gender marker change</i>	<ul style="list-style-type: none"> <li>▪ The applicant must have the conviction that they are transgender and that their gender identity does not correspond to the sex on their birth certificate.</li> <li>▪ They must have been living according to that for three years.</li> <li>▪ They must consider it “highly probable” that this will not change.</li> <li>▪ They must be German, a stateless person or refugee resident in Germany, or from a country which does not have a law of this nature and holding an unlimited right of residence or a permanent resident permit.</li> </ul> <p>A Constitutional Court decision in October 2017 held that if a child is born with intersex sex characteristics and cannot be assigned male or female at birth, their birth certificate can be marked “divers”. An adult can apply to have their gender marker changed with a medical certificate.<sup>414</sup> This came into force in January 2019.</p>

<sup>413</sup> Original name: *Gesetz über die Änderung der Vornamen und die Feststellung der Geschlechtszugehörigkeit in besonderen Fällen (Transsexuellengesetz - TSG).*

<sup>414</sup> Source: <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2017/bvg17-095.html>



## Greece







	<b>Name change</b>	Possible, as part of the gender marker change process.
	<b>Gender marker change</b>	Possible.
	<i>Legislation</i>	<i>Legal Recognition of Gender Identity Law 4491/2017.</i> <sup>415</sup>
	<i>Quote/details</i>	No medical interventions required; declaration is based on “will [and] personal feeling on the body and its external image”. Must be unmarried. At age 17 one can access legal gender recognition with parental consent and, at 15, with the agreement of an interdisciplinary committee including psychiatrists/endocrinologist/surgeon/psychologist/social worker/paediatrician. Declaration is made by personal statement to the Court, including gender, first name, and “customized surname”.

<sup>415</sup> Source: <https://www.lawspot.gr/nomikes-plirofories/nomothesia/nomos-4491-2017>





# Hungary

	<b>Name change</b>	Nominally possible.
	<i>Legislation</i>	Act No. I. of 2010 on Registries.
	<i>Quote/details</i>	<p>Article 49(1). A central registry authority may grant a change of name to Hungarian citizens on request.</p> <p>Constitutional Court decision 58/2001 (XII. 7.) AB affirms that changing one's name is a right guaranteed under Article 54(1) of the Fundamental Law of Hungary and connected with the right to dignity.<sup>416</sup></p>
	<b>Gender marker change</b>	Possible, but unclear.
	<i>Legislation</i>	429/2017. (XII. 20.) Government Decree on the detailed rules for carrying out the registration duties.
	<i>Quote/details</i>	<p>§ 7 The Registrar responsible for the change of name shall notify the Registrar of Birth of the change of gender and the consequent change of the necessary first name within 8 days of receipt of the medical opinion supporting the change in order to be recorded in the Register. The change of sex shall be recorded in the register by the Registrar on the basis of a statutory notice from the Registrar responsible for the change of name and a certified copy of the medical report.</p> <p>In order to change gender marker and name, one must include “expert opinion by a psychiatrist who establishes a diagnosis of transsexualism”; “the opinion of a clinical specialist psychologist”; “expert opinion of a gynaecologist/urologist of the applicant's gender at birth, stating that there is no professional contraindication to gender reassignment surgery”. No surgery has to be carried out before the changes, however. Applicants must also be unmarried.</p> <p>However, applications for gender marker and name change have been suspended in Hungary since July 2018.<sup>417</sup></p> <p>In May 2020, the Hungarian Parliament passed a Bill which included an article amending the category of ‘sex’ on civil registry documents. Rather than ‘sex,’ registry documents will now carry the marker of ‘sex assigned at birth.’ This has rendered gender marker change impossible and thereby ended access to legal gender recognition in Hungary. It is yet to be seen what legal challenges will be taken to this decision, but as it contravenes the European Convention on Human Rights (<i>Goodwin &amp; I v United Kingdom</i>, 2002), it is all but certain that it will be challenged.</p>

<sup>416</sup> Information supplied by Krisztina Kolos Orbán/Transvanilla, and Emese Baranyi.

<sup>417</sup> Source: <http://transvanilla.hu/informaciok/nemvaltoztatás/nemvaltoztatás>










# Iceland

	<b>Name change</b>	Possible, as part of gender marker change.
	Legislation	Act on the legal status of individuals with gender identity disorder, 57/2012, Article 8.
	Quote/details	<p>Article 8. As soon as Registers Iceland receives notification of an individual's gender marker change under paragraph 4 of Article 6, it shall inform the individual of the obligation to change his or her name. Gender marker change will not be registered in the population register until a valid application for change of name has been received by Registers Iceland, and the applicant's name has been changed in keeping with the Personal Names Act. When the gender marker change and name change are registered in the population register, a new Identity Number may be issued to the applicant by Registers Iceland.</p>
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	Legislation	Act on the legal status of individuals with gender identity disorder, 57/2012.
	Quote/details	<p>Article 6. A person who has been diagnosed and received recognised treatment from the National University Hospital Gender Identity Disorder Team can apply to the Expert Panel on Gender Identity Disorder for recognition that he or she belongs to the other gender. The application shall be accompanied by a report from the hospital's Team. This shall state inter alia that the applicant has been under the Team's care for at least 18 months, and that he or she has been living in the other gender for at least one year.</p>
	<b>Conditions for gender marker change</b>	<p>Recognition is also subject to the requirements that the applicant be of legal age and legally domiciled in Iceland; that he or she have resided continuously and lawfully in Iceland for the preceding two years, and be covered by health insurance under the Health Insurance Act. Should the applicant fulfil the criteria of Paragraphs 1 and 2, the Expert Panel will confirm that he or she belongs to the other gender.</p> <p>If applicable, the Panel shall also confirm that the applicant is eligible for gender reassignment surgery. The Expert Panel shall notify the applicant of its decision under paragraph 3. The Expert Panel also notifies Registers Iceland (Þjóðskrá) that the gender of the applicant has been legally recognised under this Act. A decision of the Expert Panel under Paragraph 3 cannot be appealed to any higher authority.</p> <p><i>Note: As of September 2019 there is a Bill which has been drafted but not yet signed which would overhaul the gender recognition system (Frumvarp til laga um kynrænt sjálfræði - A Bill on sexual agency). It describes gender recognition as a right and institutes a self-declaration model for everyone over 15 or under 15 with parental consent. No medical procedures necessary. It would be possible to choose a non-binary gender marker. Name change would be included in the process.</i></p>










# Ireland

	<b>Name change</b>	Possible, within gender marker change process.
	Legislation	<i>Gender Recognition Act 2015, Part II, Section 10.</i>
	Quote/details	<p data-bbox="767 465 1398 517"><i>Article 10. (1) A person who applies for a gender recognition certificate under section 8 shall furnish the following to the Minister: [...]</i></p> <p data-bbox="767 528 1337 557"><i>(b) the forename and surname by which he or she wishes to be known;</i></p> <p data-bbox="746 589 1206 618">Part II, Section 13. Gender recognition certificate</p> <p data-bbox="767 640 1406 692"><i>13. (1) A gender recognition certificate shall specify the date on which it issues and the following in relation to the person to whom it issues:</i></p> <p data-bbox="767 703 1334 732"><i>(a) the person's forename and surname referred to in section 10(1)(b);</i></p> <p data-bbox="767 743 1007 772"><i>(b) the person's date of birth;</i></p> <p data-bbox="767 784 959 813"><i>(c) the person's gender.</i></p>
	<b>Gender marker change</b>	Possible.
	Legislation	<i>Gender Recognition Act 2015 (25/2015).</i>
	Quote/details	<p data-bbox="767 1003 1326 1032"><i>Part III, Section 18. Effect of gender recognition certificate generally.</i></p> <p data-bbox="767 1043 1406 1167"><i>18. (1) Where a gender recognition certificate is issued to a person the person's gender shall from the date of that issue become for all purposes the preferred gender so that if the preferred gender is the male gender the person's sex becomes that of a man, and if it is the female gender the person's sex becomes that of a woman.</i></p>
	Conditions for gender marker change	<p data-bbox="746 1200 1430 1301">Applicants must be 18 years old. Applicants between 16 and 18 years of age must provide consent from parents/guardians, along with references from the applicant's primary physician and a psychiatrist unrelated to the applicant's case. (Part II, Section 12, 1-4).</p> <p data-bbox="746 1312 1414 1368">No mandatory hormonal/surgical interventions. Gender is self-declared but only binary choices allowed.</p> <p data-bbox="767 1391 1406 1514"><i>Note: The Gender Recognition (Amendment) Bill 2017 has passed the Seanad (Upper House of the Irish Parliament). If enacted, it would allow for applications for gender marker change from persons under sixteen, removes the parental consent requirement for sixteen and seventeen-year olds, and opens recognition to non-binary persons.</i></p>



## Italy

	<b>Name change</b>	Possible, but conditional. Not trans-specific.
	Legislation	Presidential Decree 396/2000, Article 89.
	Quote/details	Persons can apply for a change of forename if theirs is either absurd or shameful/embarrassing, or if it reveals their natural origin. <sup>418</sup> It is not clear whether a name which reveals a gender assigned at birth and not matching the gender identity of the adult would fall under those categories.
	<b>Gender marker change</b>	Possible, with uncertain requirements.
	Legislation	Loi 1982, n. 164 (1). Rules regarding the rectification of gender attribution. <sup>419</sup>
	Quote/details	Article 1(1). Rectification procedure under Art. 454 of the Civil Code also operates on court judgments regarding persons whose sex differs from that on their birth certificate following interventions/modifications of their sex characteristics.
	Conditions for gender marker change	Decided by a court. Article 2 164/1982 states that, when necessary, the judge can order that expert consultation be undertaken to investigate the psycho-sexual state of the applicant. <sup>420</sup> It is therefore subjective depending on the judge. In 2015 the Corte di Cassation ruled that sterilisation was not necessary for legally changing a gender marker (decision 15138/2015). The Constitutional Court made a similar decision later in 2015 (221/2015).

<sup>418</sup> Original text: "perche' ridicolo o vergognoso o perche' rivela origine naturale".

<sup>419</sup> Original name: *Norme in materia di rettificazione di attribuzione di sesso*.

<sup>420</sup> Original text: "Quando è necessario, il giudice istruttore dispone con ordinanza l'acquisizione di consulenza intesa ad accertare le condizioni psico-sessuali dell'interessato."










# Kosovo

	<b>Name change</b>	Possible, not LGR-specific.
	<i>Legislation</i>	<i>Law No. 02/L-118 on Personal Name, 2007.</i>
	<i>Quote/details</i>	Article 10. Citizen has the right to correct and change his/her personal name.
	<b>Gender marker change</b>	Not generally possible.
	<i>Conditions for gender marker change</i>	In December 2019, a transgender man was able to change his name and gender marker following a ruling from the Basic Court of Pristina, after a discrimination-based challenge to the government's refusal to allow him to do so. <sup>421</sup>

<sup>421</sup> Source: <https://kosovotwopointzero.com/en/landmark-decision-for-transgender-rights/>



# Latvia

	<b>Name change</b>	Possible.
	Legislation	Name and nationality record change law, <sup>422</sup> 66 (4052), 29.04.2009.
	Quote/details	<p>Article 2. Name change causes.</p> <p>(1) A person who is a Latvian citizen, a legal resident of the Latvian republic, or one who has been granted the status of a stateless person may change their name and/or surname if they have reached the age of 15 and present with one of the following reasons: [...]</p> <p>(6) the person changed sex;</p>
	<b>Gender marker change</b>	Possible.
	Legislation	Civil Status Registry Act, <sup>423</sup> 2012 / 197.1.
	Quote/details	<p>Article 37. Other additions to the birth registry entry.</p> <p>(1) birth registry entry [can be] supplemented, if:</p> <ol style="list-style-type: none"> <li>1. a person changes name, personal identity number, nationality, ethnicity or gender entry;</li> <li>2. one of the parents of a person changes the name, personal identity number, nationality, ethnicity or gender entry;</li> </ol> <p>(2) The birth register [can be] supplemented on the basis of a court judgment, a custody court decision, administrative action, a medical certificate or other document confirming gender reassignment, or personal application.</p> <p>Elaborated upon in the Provisions on civil status registers 2013/181.17.<sup>424</sup></p> <p>Article 134. Based on the application of the person and the opinion of the registry office, registry entries can be supplemented, if:</p> <p>134.11. The record of a person's sex is changed following medical certification by a medical institution or practitioner confirming gender 'reassignment'. The name and surname can be changed in accordance with gender.</p> <p>Article 137. On the basis of administrative actions, the registry entry can be supplemented, in the following cases: [...]</p> <p>137.3. A person who has undergone a partial or complete 'sex change' can change their name(s) and/or surname. The record of the person's sex can be changed following medical certification by a medical institution or practitioner confirming gender 'reassignment'. The name(s) and/or surname(s) can be recorded in accordance with the decision on permission to change them.</p>
	Conditions for gender marker change	Administrative procedures, no medical requirement.



<sup>422</sup> Original name: Vārda, uzvārda un tautības ieraksta maiņas likums.

<sup>423</sup> Original name: Civilstāvokļa aktu reģistrācijas likums.

<sup>424</sup> Original name: Noteikumi par civilstāvokļa aktu reģistriem.



# Liechtenstein

	<b>Name change</b>	Unclear.
	<b>Gender marker change</b>	Not possible.

*Note: ILGA Europe adds that "some trans people have been able to change their name and gender marker, but the procedure remains ad hoc, and thus inconsistent and difficult for applicants."<sup>425</sup>*

<sup>425</sup> See: <https://www.ilga-europe.org/sites/default/files/liechtenstein.pdf>



# Lithuania

	<b>Name change</b>	Possible, not trans-specific.
	<i>Conditions for name change</i>	Application to the Registrar through the courts.
	<b>Gender marker change</b>	Possible, with uncertain requirements.
	<i>Legislation</i>	<i>Law on the Implementation of the Civil Code of the Republic of Lithuania, No. VIII-1864, 18 July 2018.</i> <sup>426</sup> ; <i>Civil Code of the Republic of Lithuania, No. VIII-1864, 18 July 2010.</i> <sup>427</sup>
	<i>Quote/details</i>	<p><i>Civil Code / Article 2.27. Right to the Change of the Designation of Sex.</i></p> <p><i>1. An unmarried natural person of full age enjoys the right to the change of designation of sex in cases when it is feasible from the medical point of view. The application to the given effect shall have to be made in writing.</i></p> <p><i>2. The conditions and the procedure for the change of designation of sex shall be prescribed by law.</i></p>
<p>A national review of Lithuania states:</p> <p>“(T)he provision of Article 2.27 of the Civil Code, which allows gender reassignment, should have entered into force on 1 July 2003. However, as required by the Article 50 (e) of the same Law, there had to be an additional law adopted, establishing conditions and procedures of gender reassignment. This specific law has not been adopted yet, even though the deadline to do so was 1 January 2003... Even though there is still no simple administrative procedure for legal gender recognition and transgender persons have to apply to national courts for that purpose... there have been significant advances in the jurisprudence of the domestic courts recently. Since 2017 transgender persons are not required to undergo any medical procedures for the purpose of legal gender recognition and obtaining new personal documents. There were numerous cases in the Lithuanian courts over the period between 2017 and 2018 in which the change of gender was legally recognised regardless of whether the applicants had undergone any medical procedures or not. (Vilnius City District Court, Case No. e2YT-5329-934/2017, 7 April 2017; Vilnius City District Court, Case No. e2YT5326-987/2017, 2 May 2017).”<sup>428</sup></p>		

<sup>426</sup> Source: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.107687>

<sup>427</sup> Source: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495?jfwid=10rcyphane>

<sup>428</sup> Source: <https://www.lygybe.lt/data/public/uploads/2019/07/nat.review.transgender.pdf>





# Luxembourg

	<b>Name change</b>	Possible, as part of gender marker change process.
	<b>Gender marker change</b>	Possible.
	<i>Legislation</i>	Law of 10 August 2018 on the modification of the mention of sex and forename(s) in the civil status register and amending the Civil Code <sup>429</sup>
	<i>Conditions for gender marker change</i>	<p>Article 1(1): every adult Luxembourgish person can apply to the Minister for Justice to change their legal sex and one or more first names.</p> <p>Article 1(2): the person concerned has demonstrated by a sufficient collation of facts that the sex in their civil status registration does not conform to that by which they present and are known.</p> <p>The principal facts - which are non-cumulative and can be proven by any means - are</p> <ol style="list-style-type: none"> <li>1) that the person publicly presents as the claimed sex;</li> <li>2) that they are known as that sex by family/friends/professional connections;</li> <li>3) that they have changed their first name to conform to their sex.</li> </ol> <p>Article 2: failure to have undergone medical treatment, surgery, or sterilisation cannot justify refusal to grant the application.</p> <p>Change of gender marker is also available to children from the age of 5 years at the request of their parents, provided they fulfil the above conditions (Article 3).</p>

<sup>429</sup> Original name: *Loi du 10 août 2018 relative à la modification de la mention du sexe et du ou des prénoms à l'état civil et portant modification du Code civil.*



## Malta

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



# Moldova





	<b>Name change</b>	Possible, with unclear requirements. <i>See gender marker change procedure.</i>
	<b>Gender marker change</b>	Possible, with unclear requirements.
	<i>Legislation</i>	<i>Law No.100-XV, on Civil Status Acts adopted on April 26, 2001, Article 66(2)(c).</i>
	<i>Quote/details</i>	<div style="border: 1px solid #ccc; padding: 5px;"> <p><i>Article 66. (2) The Civil Status Office shall resolve the request for modification, rectification or completion of the civil status act, where there is no litigation existing between the persons concerned, in cases where: [...]</i></p> <p><i>(c) the applicant for the rectification presents an official act regarding a change of sex.</i></p> <p><i>(3) In the event of litigation between the persons concerned, the matter of modification, rectification or completion of the civil status act will be settled by the court.</i></p> </div> <p>The law states the possibility for “a person to change their surname in identification documents only upon presenting a medical certificate on gender correction—one that proves that the person underwent a surgical intervention on sex reassignment. Nonetheless, legislation provides no mechanisms for obtaining such a medical certificate.”<sup>430</sup></p> <p>From the information presented by GenderDoc-M, [LGBT NGO] from 2009 till present, three persons succeed in changing their birth certificates, identity cards and national passports based on the unclear legislation, without having their gender reassigned surgically. This was done upon the people presenting the document certifying the diagnoses of transsexuality.”</p> <p>According to the Law on Civil Status Documents, transsexuals can only get new ID documents after undergoing their surgeries [despite having previously begun hormone treatments]. The director of the Civil Registry Office, Lucia Ciobanu, says the government refuses to issue new ID documents to transsexual people on the basis of the diagnosis certificates issued by doctors... “The problem is that the Ministry of Health does not issue a certificate officially stating that a person has changed their sex,” added Ciobanu.<sup>431</sup></p>

<sup>430</sup> Commentary from [http://www.coe.int/t/Commissioner/Source/LGBT/MoldovaLegal\\_E.pdf](http://www.coe.int/t/Commissioner/Source/LGBT/MoldovaLegal_E.pdf).

<sup>431</sup> Commentary from <https://www.balcanicaucaso.org/eng/layout/set/print/content/view/print/100418> (2011, but still seems to apply).



## Monaco

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



# Montenegro

	<b>Name change</b>	Possible, including specifically along with change of gender.
	Legislation	Law on Personal Names, Law No. 47/2008. <sup>432</sup>
	Quote/details	<p>Article 9. A personal name, or only the surname or name, may change after a family or a personal change in status, or by request of a Montenegrin citizen.</p> <p>Article 14. Changing your personal name on demand. Your personal name, or solely first name/surname of an adult person can be altered on request; that of a minor, at the request of his legal representative. The decision on such request shall be decided by a decision of the state administrative body competent for internal affairs (hereinafter: the Ministry).</p>
	<b>Gender marker change</b>	Possible.
	Legislation	Law No. 01-382/13 of 2008 on Registry Books.
	Quote/details	<p>Article 6. The Registry of Births shall contain: [...]</p> <p>(2) amendments, modifications and deletions of the basic entries: ... change of child's personal name and change of parent's, adoptive parents' or legal guardian's personal name, change of sex... subsequent correction of errors and other changes concerning the data in question.</p> <p>Article 14. The data in the registry is changed, amended, or deleted, on the basis of the final decision of the body authorising the change in personal status.</p>
	<b>Conditions for gender marker change</b>	<p>Montenegro operates a gendered ID number system, governed by <i>Zakon o centralnom registru stanovništva Službeni list Republike Crne Gore, broj 49/2007</i>. Article 22 determines the number: it includes a three-number grouping (Group V), which is 000-499 for a male-assigned person and 500-999 for one female-assigned. Article 27 allows for a change in number with a change of birth certificate. Each person is assigned a registration number. The Ministry can annul the registration number and assign a new one, based on a final decision [of the authorising body, as above] where there is a correction of gender data or date of birth to be made to the birth certificate. The Ministry will cancel the incorrect registration number and determine the new one.</p> <p>The <i>Act on Amendments to the Health Insurance Act</i><sup>433</sup> envisions 80% of the cost of "change of sex for medical reasons" being covered by insurance (Article 16b).</p> <p>This is elaborated on in the <i>Ordinance on Determination of Medical Reasons for Change of Gender</i>.<sup>434</sup> An applicant for "change of sex for medical reasons" must be over 16 (Article 2). The determination procedures include: examination by a primary care physician; review and diagnosis by a specialist in internal medicine (general internal medicine, endocrinology); review and diagnosis by a specialist surgeon (general surgery, plastic and reconstructive surgery, urology and gynaecology); review and diagnosis, as needed, by other doctors or medical specialists; report by a psychiatrist and psychologist, and report on "social history" by a social worker (Article 3).</p> <p>A determination will then be given on the basis of these reports and histories by a medical doctor of an appropriate specialty from the Clinical Centre of Montenegro (Article 4).</p>

<sup>432</sup> Original name: *Zakon o ličnom imenu "Službeni list Crne Gore, broj 47/2008*.

<sup>433</sup> Original name: *Zakon o izmjenama i dopunama Zakona o zdravstvenom osiguranju "Službeni list Crne Gore, broj 14/2012*.

<sup>434</sup> Original name: *Pravilnik o utvrđivanju medicinskih razloga za promjenu pola "Službeni list Crne Gore, broj 47/2014*.



# Netherlands

	<b>Name change</b>	Possible, including specifically with change of gender ( <i>as explained below</i> ).
	<b>Gender marker change</b>	Possible.
	<i>Legislation</i>	<i>Act of 18 December 2013 (amending Book 1 of the Civil Code and the Act municipal base administration personal data related to the change of the terms and conditions for matters of change of the mention of the gender in the deed of birth).</i>
	<i>Conditions for gender marker change</i>	<p>Civil Code, Book 1.<sup>435</sup></p> <div style="border: 1px solid #ccc; padding: 10px;"> <p><i>Article 28. Any Dutch citizen aged 16 years or older who has a "conviction of belonging to the sex other than that which is mentioned on their birth certificate" can make an application to the appropriate area's Civil Registrar. A non-national can apply if they have been resident in the Netherlands for a year and have a valid residence permit. A minor aged 16 or over is competent to represent themselves in this process.</i></p> <p><i>Article 28a. The application should be accompanied by a statement from an expert (appointed by executive order) to the effect that the applicant has the conviction of belonging to the gender other than mentioned in his birth certificate and, in the opinion of the expert, has proven that they understand the scope and meaning of this statement and of the change in birth certificate. The expert should not enter the statement if they have reasonable reason to doubt the validity of such conviction.</i></p> <p><i>Article 28b. If these terms are complied with, the registrar can enter the change of gender into the registry. They can also enter a change of first name for the applicant.</i></p> </div>

<sup>435</sup> Original name: *Burgerlijk Wetboek Boek 1.*



## North Macedonia

	<b>Name change</b>	Possible.
	<i>Legislation</i>	<i>Law on Personal Name 1995, Article 5.</i>
	<b>Gender marker change</b>	Possible/unclear.
	<i>Quote/details</i>	<p>No law currently exists, although the 2019 ruling in <i>X v North Macedonia</i> at the European Court of Human Rights held that Macedonia's failure to provide a clear framework for legal gender recognition is a breach of the Article 8 ECHR right to private life.</p> <p>Rainbow Europe states that:</p> <div data-bbox="759 667 1422 831" style="border: 1px solid #ccc; padding: 5px; margin-top: 10px;"> <p><i>There is an administrative procedure in which individuals can change the data in the registry (birth certificate). The change can be made based on a decision by relevant state organ. This provision is vague and unclear, but it does not forbid legal gender recognition. In that respect there is one case when trans man changed the gender marker in the same administrative procedure provided for all changes in the registry data.</i></p> </div>



# Norway

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





# Poland

	<b>Name change</b>	Possible, not LGR-specific.
	Legislation	<i>Law on the change of name and surname</i> , 17 October 2008. <sup>436</sup>
	Quote/details	<p>A change of name can only be made for important reasons, for example:</p> <ol style="list-style-type: none"> <li>1) a name or surname which is ridiculous or contrary to human dignity;</li> <li>2) change for a name or surname used;</li> <li>3) a name or surname, which has been unlawfully altered;</li> <li>4) a name or surname which is in accordance with the laws of a country of which one also holds citizenship.</li> </ol> <p>Applications to change one's name should be made in writing and include your justifications for wanting the change along with any documentation which supports your application (Article 11).</p> <p>The decision is made by the head of the civil registry of your geographical area (Article 13).</p>
	<b>Gender marker change</b>	Possible, but complicated. Court procedure.
	Legislation	<i>Polish Civil Code</i> , Article 189.
	Conditions for gender marker change	<p>Court procedure in which the applicant must file an "assessment suit", manufacturing proceedings between the applicant and their family. Very subjective and can result in dismissal of the applicant's suit. Conditions can include a 'real-life test'—if the applicant has expressed their gender identity publicly for (usually) two years, often without any medical intervention, before LGR can be granted - and medical testing, both psychological and physical. This is based on the Supreme Court decision of 22 March 1991 which interprets the sense of belonging to a gender as a personal good, per Article 23 of the Civil Code, meaning that a suit can be brought on this basis under Article 189 of the Civil Code.</p> <p>Another Supreme Court judgment of 22 September 1995 established the parents or guardians of the applicant for LGR as the appropriate parties to form the defendants in the lawsuit taken.<sup>437</sup></p> <p><i>Transfuzja</i> Report about experiences of trans persons on the courts process.<sup>438</sup> A transsexual diagnosis in Poland can be obtained through a series of tests and examinations (both psychological and physical—including head x-rays, genitalia examination and karyotype check). One of the most common elements of this method is the "real life test (RLT)", where one is forced to live full-time as their preferred gender. Healthcare providers recommend a two-year RLT during which one is not prescribed any hormonal treatment nor is able to change their legal status... the RLT is being gradually withdrawn. However, since there are no unitary standards on transsexual diagnosis in Poland, some diagnosticians still use it in their practice.</p> <p>Apart from the RLT, a person going through gender recognition in Poland is subjected to physical examination, along with psychological and psychiatric evaluations. After those are fulfilled, the diagnostician decides whether to prescribe hormones, but usually does so after the person has already been diagnosed as transsexual. While it is possible to receive hormonal treatment without the diagnosis, this practice might be problematic for further court procedures.</p>

<sup>436</sup> Original name: *USTAWA z dnia 17 października 2008 r. o zmianie imienia i nazwiska*.

<sup>437</sup> Quotes and info from <http://www.transseksualizm.pl/p74> - the forum cited in the *Transfuzja* report as the most common source of information for Polish people seeking LGR proceedings.

<sup>438</sup> Source: [http://transfuzja.org/download/publikacje/gender\\_recognition\\_in\\_poland.pdf](http://transfuzja.org/download/publikacje/gender_recognition_in_poland.pdf).








# Portugal

	<b>Name change</b>	Possible, as part of gender marker change.
	<b>Gender marker change</b>	Possible.
	Legislation	Lei n.º 38/2018, <sup>439</sup>
	<b>Conditions for gender marker change</b>	<p>Article 6(1): 1.</p> <p><i>The legal recognition of gender identity presupposes the opening of a procedure for changing the mention of sex in the civil registry and the consequent change of proper name upon request.</i></p> <p>Article 7(1).</p> <p><i>They have the legitimacy to request the procedure of changing the mention of sex in the civil register and the consequent change of proper name to persons of Portuguese nationality, of legal age and not shown to be prohibited or disabled by psychic anomaly, whose gender identity does not corresponds to the sex assigned at birth.</i></p> <p>Article 7(2).</p> <p><i>People of Portuguese nationality aged between 16 and 18 years may request the procedure of changing the mention of sex in the civil registry and the consequent change of own name, through their legal representatives, and the conservative should proceed to present hearing of the applicant, in order to ascertain his express, free and informed consent, by means of a report requested by him to any physician enrolled in the Order of Doctors or psychologist enrolled in the Order of Psychologists, who attests exclusively to his decision-making ability and informed will without reference to gender identity diagnoses, always taking into account the principles of progressive autonomy and the best interests of the child contained in the Convention on the Rights of the Child.</i></p> <p>Article 7(3).</p> <p><i>The intersex person may request the procedure of change of the sex mention in the civil registry and the consequent change of own name, as soon as the respective gender identity is manifested.</i></p> <p>Article 9(2): 2.</p> <p><i>No person shall be required to prove that he has undergone medical procedures, including sex reassignment surgery, sterilization or hormone therapy, as well as psychological and / or psychiatric treatment, as a requirement on which the decision referred to in paragraph 1 is based.</i></p>

<sup>439</sup> Source: <https://dre.pt/pesquisa/-/search/115933863/details/maximized>



# Romania

	<b>Name change</b>	Possible. As explained below.
	Legislation	Law 119/1996 on civil status acts, republished 2012.
	<b>Gender marker change</b>	Possible.
	Legislation	<p>Article 100 of the Civil Code allows for changes to be made to one's civil status. It must be approved by a final court decision (100.1) and the mayor of the administrative district concerned (100.2). The approval can be given "only if an action for modification of the civil status, which was admitted by a final court decision, has been formulated" (100.3).<sup>440</sup></p> <p>Law 119/1996 on civil status acts, republished 2012.<sup>441</sup></p> <div data-bbox="762 725 1422 965" style="border: 1px solid #ccc; padding: 5px;"> <p>Article 43. In acts of birth and, where appropriate, in marriage or death certificates changes in the civil status of the person will be noted in the following cases: [...]</p> <p>(f) change of name;</p> <p>(h) correction, addition or cancellation of acts of civil status or markings thereon;</p> <p>(i) change sex after a final and irrevocable court decision.</p> </div>
	Conditions for gender marker change	<p>Court process.</p> <p>The law governing the ability of transgender persons to change their identity was vague and incomplete, resulting in inconsistency in judicial practice concerning legal recognition of gender identity. In some cases, authorities denied recognition of a change in identity unless a sex-reassignment intervention had occurred.<sup>442</sup></p> <p>It is a court process; before the hearing, two letters are needed (from a psychiatrist and an endocrinologist). The decision most often reached is that genital surgery is needed before you can change your civil documents and identity card. There has been a court case in Iasi where permission to change documents was granted without surgery.<sup>443</sup></p>

<sup>440</sup> Original text: "daca a fost formulata si o actiune de modificare a starii civile, admisa printr -o hotarare judecatoreasca ramasa definitiva".

<sup>441</sup> Original name: *Legea 119/1996 cu privire la actele de stare civila, republicata 2012*.

<sup>442</sup> Source: United States Department of State, *2016 Country Reports on Human Rights Practices - Romania*, 3 March 2017. <http://www.refworld.org/docid/58ec89dd13.html>





<sup>443</sup> Source: TRANSform, ONG rumana trans <http://transformgroup.wixsite.com/transform-romania/pasi-in-tranzitie>.



# Russia

	<b>Name change</b>	Possible.
	Legislation	<i>Russian Civil Code, Article 19; Law on Acts of Civil Status, Chapter VII.</i>
	Quote/details	<p>Name change is available in law, however in practice it is difficult or even impossible.</p> <p>While traditionally most Russian names (first name, patronymic, surname) are gendered, there are no official lists of male and female names or rules regulating how they should be formed. At the same time, in practice it is usually easy to change “traditionally” gendered name to a gender-neutral one, but not to a “traditionally opposite-gender name.”</p> <p>One such case has been exhausted recently on the national level and submitted to the European Court of Human Rights in October 2016 by the Transgender Legal Defense Project.</p>
	<b>Gender marker change</b>	Nominally possible.
	Legislation	<i>No. 143-FZ. Law on Acts of Civil Status.</i>
	Quote/details	<p><i>Article 70. It is possible to correct/change one's civil gender status with the presentation of certification by a medical institution, following procedure to be established by the executive authority for the region, and following state policy and legal regulation of public health.</i></p>
	Conditions for gender marker change	<p>Legislation (not trans-specific), civil registry and court applications.</p> <p><i>No.143-FZ. Law on Acts of Civil Status, Article 70.</i></p> <p>Conditions are not established by law and are therefore subject to the practices of the individual regional civil registry office or court. The application is presented to the civil registry office, although in practice most of these are refused, as there is no legal definition of the medical certification required under Article 70.</p> <p>There should be at least a diagnosis of “Transsexualism” using code F64.0 of the International Classification of Diseases-10, hormone therapy, gender reassignment surgery, and, in exceptional cases, one surgery such as mastectomy. Cases where the applicants have not had phalloplasty did not amount to enough surgical requirements for Gender marker change</p> <p>At the time of going to print, a new draft law on legal gender recognition is scheduled to come into force in Russia in January 2018. The new law would establish “a permanent medical commission [...] consisting of a psychiatrist, a sexologist and a medical psychologist”. This Commission would hear application for gender marker change on the basis of a referral from a psychiatrist who has observed the applicant for a period of eighteen months. The psychiatrist must certify to “establishing sexual reorientation” as a result of “medical supervision”; no clarification is offered as to whether physical medical treatments are required.</p>
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	<i>Code of Administrative Offences of the Russian Federation 2001.<sup>444</sup></i>
	Quote/details	<p><i>Article 6.11. Engagement in Prostitution</i></p> <p><i>Engagement in prostitution- shall entail the imposition of an administrative fine in the amount of one thousand five hundred to two thousand roubles.</i></p>

<sup>444</sup> No.195-Fz of 30 December 2001.

	[DE FACTO CRIMINALISATION]	
	<b>Legislation</b>	<i>Criminal Code 1996.</i> <sup>445</sup>
	<b>Quote/details</b>	<i>Article 242. Making and Distribution of Materials or Objects with Pornographic Pictures of Minors.</i>
	[DE FACTO CRIMINALISATION]	
	<b>Situation</b>	There is no <i>de jure</i> criminalisation of trans people in Russia, however, trans people are targeted <i>de facto</i> under laws criminalising sex work, and frequently without any legal basis at all.
	<b>Examples</b>	<p>Laws regulating sex work, including Article 6.11 of the Code of Administrative Offences, are used against trans people. These laws are used to legitimise and justify human rights abuses against sex workers by the authorities.<sup>446</sup> Notably sex work laws are used indiscriminately against transgender and cisgender sex workers alike, and both are targeted according to their documentation rather than their gender identity/expression.<sup>447</sup></p> <p>In December 2019 it was reported that a transgender woman, Michelle, was found guilty in the Soviet District Court under <i>Article 242(1) Criminal Code, Making and Distribution of Materials or Objects with Pornographic Pictures of Minors</i> and sentenced to three years in prison.<sup>448</sup> Michelle had, in 2013-2014, published drawings featuring naked characters from Japanese cartoons. At trial, the Center for Socio-Cultural Expertise- an organisation that has been used in politically charged cases, including against Pussy Riot- evaluated that the drawings depicted 'male faces under 14 years of age.' The charges are wildly considered as bogus.<sup>449</sup> Despite Michelle's gender identity being female, her documents state that she is male and she is therefore being forced to serve her sentence in a male prison without access to hormone therapy.<sup>450</sup></p> <p>Furthermore, at the time of writing, Transgender Legal Defense Project (TLDP) are aware of three people who were detained because their documents did not align with their gender identity.<sup>451</sup> However, as the criminal and detention system in Russia is very closed, it is hard to find information on who is detained and it could therefore be more people than TLDP are aware of.</p> <p>In December 2017, Coming Out LGBT Group's monitoring programme reported the detention of a trans man, Francis, who was stopped by police who requested his documents. He was accused of incitement to suicide and it was claimed that an unknown woman had filed a statement claiming that he had written to her about ways to commit suicide. Francis' digital devices and hormone medication were taken from him and he was subjected to transphobia and threats by the officers. He was released a few hours later with no documentation concerning the search or detention.<sup>452</sup></p> <p style="text-align: center;"><b>Situation in the Chechen Republic and the Northern Caucasus</b><sup>453</sup></p>

<sup>445</sup> Criminal Code of the Russian Federation, No. 63-Fz of 13 June 1996. <https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.pdf>

<sup>446</sup> Silver Rose, Submission for the CESCR on the implementation of the ICESCR in the Russian Federation to sex workers (Report 2017), 4. [https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/RUS/INT\\_CESCR\\_CSS\\_RUS\\_28780\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/RUS/INT_CESCR_CSS_RUS_28780_E.pdf)

<sup>447</sup> Interview with Dan Khaymovich, Transgender Legal Defense Project, 12 May 2019.

<sup>448</sup> Nicola Habersetzer, 'Russian Trans Woman Sentenced to Three Years in Men's Prison on Bogus Pornography Charges' Human Rights Watch, 6 December 2019, <https://www.hrw.org/news/2019/12/06/russian-trans-woman-sentenced-three-years-mens-prison-bogus-pornography-charges>.

<sup>449</sup> Ibid.

<sup>450</sup> Ibid.

<sup>451</sup> Interview with Dan Khaymovich, 2019.

<sup>452</sup> Case documented by "Coming Out" LGBT group monitoring programme, <http://comingoutspb.com/upload/iblock/60e/60e6425e4db0c241a2cb42af87cfe48e.pdf>

<sup>453</sup> For full report on the situation see, Russian LGBT Network, "They said that I'm not a human, that I am nothing, that I should rather be a terrorist, then a fagot" LGBT Persecution in the North Caucasus: A Report (Saint-Petersburg, 2017) [https://www.ilga-europe.org/sites/default/files/chechnya\\_report\\_by\\_rus\\_lgbt\\_n\\_31\\_july\\_2017.pdf](https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf); Amnesty International, 'Russia: Chechen authorities resume homophobic crackdown' 14 January 2019, <https://www.amnesty.org/en/latest/news/2019/01/chechnya-crackdown-renewed/>.

The situation in the Chechen Republic and the Northern Caucasus has been widely reported on in mainstream media and condemned on the international stage.<sup>454</sup> First reported in 2017, the crisis has involved a 'crackdown' on LGBT people in Chechnya comprising beatings, detention, torture and extrajudicial killings.<sup>455</sup> TLDP are aware of instances of trans people escaping Chechnya to Moscow; however this does not guarantee their safety.<sup>456</sup>



<sup>454</sup> See Sarah Burton, *SOGIESC in the Council of Europe* in Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, March 2019), 71, for responses from Council of Europe; see OHCHR, "Chechnya: UN experts urge action after reports of renewed persecution of lesbian gay and bisexual people" (Geneva, 13 February 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24162&LangID=E>

<sup>455</sup> BBC, "Chechnya LGBT: Dozens detained in new gay purge" 14 January 2019 <https://www.bbc.co.uk/news/world-europe-46871801>.

<sup>456</sup> Interview with Dan Khaymovich, 2019.



## San Marino

	<b>Name change</b>	Unclear.
	<b>Gender marker change</b>	Not possible.



# Serbia



	<b>Name change</b>	Possible, as part of gender marker change.
	<b>Gender marker change</b>	Possible.
	Legislation	Law on Amendments to the Registry Books, 2018, Article 25 (amends Law on Civil Registers, Article 45b)
	Quote/details	<p>Article 45b.</p> <p>The birth registry records the gender change based on decisions of the authority referred to in Article 6, paragraph 2 and 4 of this Law, which is passed on the basis of prescribed certificates from the competent health institution.</p> <p>The health institution referred to in paragraph 1 of this Article shall submit the certificate to the competent authority to the authority referred to in Article 6 para. 2 and 4 of this Law within 15 days from the date of gender change.</p> <p>The health institution shall submit the certificate referred to in paragraph 1 of this Article by electronic means by and without delay and by mail.</p> <p>The certificate referred to in paragraph 1 of this Article shall include: name and surname; date; city; municipality / city of birth; Personal identification number; first and last name of parents, person to whom the sex has been changed; information about the gender change for that person, as well as the doctor's name who issued the certificate. The Minister and the Minister responsible for health affairs shall mutually prescribe the manner the issue and the certificate form referred to in paragraph 1 of this Article.</p>
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Law on Public Order and Peace 2016. <sup>457</sup>
	Quote/details	<p>Article 14.</p> <p>"Whoever engages in prostitution or provides premises for prostitution shall be punished by imprisonment no exceeding 30 days."</p> <p>If arrested, both clients and sex workers are punished with up to 60 days in prison or fines up to 150 000 Serbian dinar (€1300).<sup>458</sup></p> <p>Article 16</p> <p>Whoever is engaged in sex work (whoever commits prostitution), or uses the services of prostitution or provide a space for prostitution- will be fined from 50, 000 to 150, 000 dinars or imprisonment for 30 to 60 days.</p> <p>Whoever gives premises to a minor for prostitution- will be punished by imprisonment of 30 out of 60 days.<sup>459</sup></p>
[DE FACTO CRIMINALISATION]		

<sup>457</sup> Zakono Javnom Redu I Miru 2016, "Sl. Glasnik RS" br. 6/2016 i 24/2018; Serbian version: [https://www.paragraf.rs/propisi/zakon\\_o\\_javnom\\_redu\\_i\\_miru.html](https://www.paragraf.rs/propisi/zakon_o_javnom_redu_i_miru.html)

<sup>458</sup> NSWP: Global Network of Sex Work Projects, 'Law Amendment in Serbia Increases Penalties for Sex Work' 28 March 2016, <https://www.nswp.org/news/law-amendment-serbia-increases-penalties-sex-work>

<sup>459</sup> Other Laws Regulating Sex Work; Criminal Code, Krivični Zakonik, "Sl. Glasnik RS", br. 85/2005, 88/2005 – ispr. 207/2005 – ispr. 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 I 94/2016, Article 183, Undertaking and facilitating sexual intercourse, "Who deceives a minor for the purpose of fulfilling a promise, an act of equal value or other sexual acts, shall be punished by imprisonment for a term between one and eight years and a fine"; Article 184, Mediation in the practice of prostitution, "Who instigates or incites another to prostitution or participates in the surrender of a person to another for the purpose of prostitution, or who, through the media and other similar means, propagates or advertises prostitution, shall be punished by imprisonment for a term between six months and five years and a fine." Serbian version: [https://www.paragraf.rs/propisi/krivicni\\_zakonik.html](https://www.paragraf.rs/propisi/krivicni_zakonik.html); Law on Misdemeanour available in Serbian here [https://www.paragraf.rs/propisi/zakon\\_o\\_prekrasajima.html](https://www.paragraf.rs/propisi/zakon_o_prekrasajima.html)



	<p><b>Situation</b></p>	<p>There are no laws in Serbia, that <i>de jure</i> criminalise transgender and gender diverse people. However, in practice, trans people in Serbia are <i>de facto</i> criminalised by laws criminalising sex work.<sup>460</sup></p>
	<p><b>Examples</b></p>	<p>Many trans people face arrests, detention and prison sentences under the <i>Law on Public Order and Peace</i>.<sup>461</sup> Global Network of Sex Work Projects noted in 2016 that, “in addition to fines, sex workers are almost always punished and sentenced to prison, which happens even if the police do not catch them while working. If the police suspects someone of being a sex worker, or if someone is known to be a sex worker by the police, they will arrest them even if they are not working.”<sup>462</sup> Police are also reported as being most violent towards transgender people and drug addicts during arrests and raids.<sup>463</sup></p> <p>Once arrested under the Law – whether engaging in sex work or not – trans people are detained and taken to court the following day. Article 14 is considered a misdemeanour under national law and not a criminal offence.<sup>464</sup> Consequently, the constitutional right to “free legal counsel” for “any person charged with a criminal offense” does not apply.<sup>465</sup> It is argued that an interpretation of case law from the European Court of Human Rights<sup>466</sup> would classify Article 14 as <i>criminalising</i> sex work, given the nature of the sanction, and therefore there is a right to legal counsel in these hearings.<sup>467</sup></p> <p>If found guilty of engaging in “prostitution” under Articles 14 or 16, as most people are, a sex worker is expected to pay a fee of €400–€1000. If they are unable, they will be imprisoned for between 30 and 60 days.<sup>468</sup> The price of sexual services in Serbia range between €4.25 and €12.75; as such, sex workers are not able to pay a fine 100 times higher than that and are given a prison sentence instead.<sup>469</sup> Sex workers are also five times more likely to be punished than clients; where a sex worker is sentenced for “prostitution”, any previous “prostitution” offences are considered as aggravating circumstances. The same does not apply for clients.<sup>470</sup></p> <p>Furthermore, police in Serbia often <i>presume</i> that transgender people are sex workers. A pattern has emerged of where if a trans person is found with more than three condoms on their person, they are presumed to be a sex worker and arrested.<sup>471</sup> There is no legal basis for this presumption.</p>

<sup>460</sup> Interview with Agatha Milan Djuric and Jovanka Todorovic, GETEN, Centre for LGBTIQ People’s Rights, 13 June 2019.

<sup>461</sup> *Ibid*; The latest version of the Law on Public Order and Peace, criminalising sex work, was introduced in 2016 during the ruling party’s hyperproduction of laws. There was very little time to review the law, which included new regulations on sex work. LGBTI activists, including Agatha Milan Djuric and Jovanka Todorovi of GETEN, analysed parts related to “prostitution” in a limited timeframe, however their comments were ignored, and the alarming amendments were implemented. The new law now criminalises clients as well as sex workers, a move which was advocated for by some women’s rights organisations. This amendment has made the situation more dangerous for sex workers who have been pushed further underground and are being forced to work in more vulnerable circumstances.

<sup>462</sup> NSWP: Global Network of Sex Work Projects, ‘Law Amendment in Serbia Increases Penalties for Sex Work’ 28 March 2016, <https://www.nswp.org/news/law-amendment-serbia-increases-penalties-sex-work>.

<sup>463</sup> JAZAS and ASTRA, Law Above All and Court Practices: Impact of the criminalisation of sex work on the human rights of sex workers and trafficked persons in Serbia (Report, Belgrade 2015), p. 85. [https://www.sexworkeurope.org/sites/default/files/userfiles/files/LAW\\_ABOVE\\_ALL\\_AND\\_COURT\\_PRACTICES\\_2016-5ver.pdf](https://www.sexworkeurope.org/sites/default/files/userfiles/files/LAW_ABOVE_ALL_AND_COURT_PRACTICES_2016-5ver.pdf)

<sup>464</sup> *Ibid.*, p. 16.

<sup>465</sup> Constitution of The Republic of Serbia, Official Gazette of the RS, no.98/2006, Article 33, Special rights of persons charged with criminal offense.

<sup>466</sup> European Convention of Human Rights was ratified by Serbia in 2005.

<sup>467</sup> *Engel and Others v the Netherlands*, 8 June 1976, Application no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, series A, no. 22; *Deweer v Belgium*, 27 February 1980, Application no 6903/75, para 42, 44 and 46; JAZAS and ASTRA, Law Above All and Court Practices: Impact of the criminalisation of sex work on the human rights of sex workers and trafficked persons in Serbia, (Report, Belgrade 2015), 16. [https://www.sexworkeurope.org/sites/default/files/userfiles/files/LAW\\_ABOVE\\_ALL\\_AND\\_COURT\\_PRACTICES\\_2016-5ver.pdf](https://www.sexworkeurope.org/sites/default/files/userfiles/files/LAW_ABOVE_ALL_AND_COURT_PRACTICES_2016-5ver.pdf)

<sup>468</sup> The average monthly wage in Serbia is around €450 meaning most people cannot pay the fines and are imprisoned.

<sup>469</sup> Iva Paradanin, ‘Sve što niste znali o prostituciji I zakonu u Srbiji’ *Vice*, 3 September 2018, <https://www.vice.com/rs/article/a3qaya/sve-sto-niste-znali-o-prostituciji-i-zakonu-u-srbiji>

<sup>470</sup> Interview with Agatha Milan Djuric and Jovanka Todorovic, 2019.

<sup>471</sup> *Ibid.*

## SERBIA

Interview with *Agatha Milan Djuric and Jovanka Todorovic*, GETEN, Centre for LGBTIQ People's Rights, 13 June 2019.

### Overall situation for trans people in Serbia

In Serbia the transgender community are exposed to high levels of physical, psychological and sexual violence from the public, as well as harassment from law enforcement. The community is reported to face the most hostile environment in the surrounding Balkan region.<sup>472</sup>

A National Democratic Institute poll in 2015 revealed that 23 percent of LGBTI respondents have been physically assaulted based on their sexual orientation and/or gender identity. It also reported that 70 percent of respondents had experienced psychological violence and harassment despite the introduction of hate crime as an aggravating circumstance for sentencing in the Criminal Code in 2012.<sup>473</sup>

Trans sex workers in particular face persistent discrimination and abuse from the authorities and wider public. Between 2011 and 2013, of the 23 sex workers in Belgrade who reported human rights violations committed against them, the majority were trans women.<sup>474</sup>

### Deprivation of liberty cases

GETEN reports frequent contact from transgender people in detention. A huge problem for trans people who are imprisoned is that their gender identity does not match their personal documents. GETEN is aware of a number of trans women who have been placed in male prisons. Agatha Milan

Djuric notes that police officers often declare that a person's personal identification "is the only relevant thing" in making a decision on where to detain someone and that "it is in accordance with Serbian law."<sup>475</sup>

In TGEU's, *For the Record* report, Serbian NGO Sloboda Prava found that trans sex workers used to be searched by male police officers only. More recently, female officers searched people above the waist and male officers below the waist. It was also common for trans women's hair to be cut as short as part of preparations for prison.<sup>476</sup> As well as being segregated on the basis of assigned sex, trans detainees also face violence in detention and no access to healthcare such as hormone therapy or gender reassignment surgery.<sup>477</sup>

GETEN recently worked with lawyers to produce two protocols for authorities in cases of search and arrest of trans people that could be applicable in the current system. The first 'Protocol for Police' included articles on arrest, detention and allowing a trans person to be searched by someone of the same gender. The second protocol is for the execution of criminal sanctions and addresses prison sentences.<sup>478</sup> They were presented to the Ministry of Police and Directorate (under the Ministry of Justice) and other institutions, but so far no changes have been made. GETEN revised the two protocols recently and are in the process of new advocacy efforts in this regard.

<sup>472</sup> TGEU, Trans Network Balkan, *Experiences of Trans People in the Balkan EU Accession countries*, 2017. <https://tgeu.org/wp-content/uploads/2017/11/TMB-TGEU-Joint-Submission-FINAL.pdf>

<sup>473</sup> National Democratic Institute, *LGBTI Public Opinion Poll Western Balkans*, 2015, Article 54(a) Official Gazette Republic of Serbia, No. 121/2012. [https://www.ndi.org/LGBTI\\_Balkans\\_poll](https://www.ndi.org/LGBTI_Balkans_poll)

<sup>474</sup> JAZAS and ASTRA, *Law Above All and Court Practices: Impact of the criminalisation of sex work on the human rights of sex workers and trafficked persons in Serbia*, (Report, Belgrade 2015), p. 22. [https://www.sexworkeurope.org/sites/default/files/userfiles/files/LAW\\_ABOVE\\_ALL\\_AND\\_COURT\\_PRACTICES\\_2016-5ver.pdf](https://www.sexworkeurope.org/sites/default/files/userfiles/files/LAW_ABOVE_ALL_AND_COURT_PRACTICES_2016-5ver.pdf)

<sup>475</sup> Interview with Agatha Milan Djuric and Jovanka Todorovic, 13 June 2019.

<sup>476</sup> J Vidic, *ProTrans in Serbia*, in Boglarka Fedorko (ed.), *For the Record: Documenting Violence Against Trans People* (TGEU, 2015), 86. <http://tgeu.org/pro-trans>

<sup>477</sup> Equal Rights Association for Western Balkans and Turkey, 'Gayten- LGBT Presents Drafts of Protocols on Police Treatment of Transsexual and Transgender People' 8 February 2018. <https://www.lgbti-era.org/news/gayten-lgbt-presents-drafts-protocols-police-treatment-transsexual-and-transgender-people>; Serbian version: <http://transserbia.org/vesti/najave/1343-predstavlanje-nacrta-protokola-o-postupanju-policije-sa-transpolnim-i-transrodnim-licima%C2%A0>

<sup>478</sup> Interview with Agatha Milan Djuric and Jovanka Todorovic, 13 June 2019; Equal Rights Association for Western Balkans and Turkey, 2018.



# Slovakia

	<b>Name change</b>	Possible.
	Legislation	Act on Name and Surname 300/1993, as amended.
	Quote/details	<p>Section 6(6). A person undergoing 'sex change' can enable the district office to use a neutral name and surname for them, at their request, and with confirmation from the medical facility in which they are undergoing treatment.</p> <p>Section 7. Permission to change one's forename and surname is not required where it is requested on grounds of gender reassignment. The application is made at the civil registry office. If it is being requested on grounds of gender reassignment a medical report must be submitted.</p>
		<p><i>Transfuzia</i> states that in order to enact this process, a diagnosis from a psychiatrist is usually required.</p>
	<b>Gender marker change</b>	Possible, with unclear/prohibitive requirements.
	Legislation	Act 301/1995 on personal identification numbers.
	Quote/details	<p>Section 8(2): The Ministry shall, on request, change Social Security number, b) based on a medical opinion on the change of sex of the person.</p>
	Conditions for gender marker change	<p>The law on changing one's identification number requires a 'medical opinion'. Slovak NGO <i>Transfuzia</i> cites psychiatric report and evidence of sterilisation as being commonly required.<sup>479</sup></p>
		<p>PQ to the European Commission in November 2016 noted: "Unlike many Member States, Slovakia does not authorise transgender persons to have their gender legally recognised without undergoing gender reassignment treatment. However, there is no clear legal basis specifying that such treatment entails sterilisation. And yet, since July 2016, birth registries have required a medical certificate to be submitted, testifying that 'reproductive functions of the patient have been definitely eliminated'. As a result, transgender persons are not able to have their gender legally recognised without undergoing forced sterilisation."<sup>480</sup></p>

<sup>479</sup> Source: <http://www.transfuzia.org/situacia-na-slovensku/legislativa>.

<sup>480</sup> Source: <http://www.europarl.europa.eu/sides/getdoc.do?pubref=-//ep//text+wq+e-2016-008856+0+doc+xml+v0//en>.



# Slovenia

	<b>Name change</b>	Possible, not trans-specific.
	Legislation	Law on Personal Names (ESL-1) No. 001-22-3/06.
	Quote/details	<p>Article 18. Names can be changed on request by an adult citizen. It is decided by the competent authority to which the application is made.</p> <p>Minors need the consent of their legal guardians (Article 20).</p>
	<b>Gender marker change</b>	Possible.
	Legislation	Register of Deaths, Births and Marriages Act, Article 37. <sup>481</sup>
	Quote/details	<p>Article 37: The change of sex shall be entered on the basis of a decision of the competent authority to change the information entered. The basis for the decision was certified by the competent medical institution or physician indicating that the person had changed sex.</p> <p>Before the change of gender marker is registered, the applicant must request a new EMSO (identification number).</p>
	Conditions for gender marker change	Per legislation, medical certification. However, there are no criteria for what this must include or what level of intervention must have been performed. It is therefore dependent on the individual civil registrar and uncertain for the applicant.

<sup>481</sup> Original name: *Pravilnik o izvrševanju zakona o matičnem registru*



## Spain

	<b>Name change</b>	Possible, provided for with gender marker change (as explained below).
	<b>Gender marker change</b>	Possible.
	<b>Legislation</b>	<p>Law 3/2007, of the 15th of March, regulating the rectification of mentions in the registry of the sex of persons.<sup>482</sup></p> <p><b>Note:</b> Spain is also currently debating a Bill which would remove pathologisation requirements and introduce self-determination.<sup>483</sup></p>
	<b>Conditions for gender marker change</b>	<p>Article 1.1. Legitimacy. Any person of Spanish nationality of legal age and capacity can request change of gender, including change of name (so as to keep the name in accordance with the registered gender).</p> <p>Article 4. Conditions.</p> <p>4.1.a. That they have been diagnosed with gender dysphoria, certified by a doctor or clinical psychologist, including stable and persistent dissonance between gender identity and psychosocial sex, and in the absence of other personality disorders;</p> <p>4.1.b. That they have had two years of medical treatment to alter physical characteristics to match gender identity; this must be certified by the doctor under whose care the treatments have taken place, or an approved medical examiner;</p> <p>4.2. These medical interventions do not have to include sex "reassignment" surgery. The requirement for medical treatment/certification of such can be waived to account for "health or age reasons".</p> <p><b>Note:</b> Article 1 was declared unconstitutional by the Constitutional Court in July 2019 insofar as it applies to minors, who now cannot be barred from accessing gender marker change.</p>



## Autonomous Region of Andalucía [Spain]

	<b>Gender marker change</b>	Possible. The Andalusian Parliament in Spain passed a separate law on transgender status in 2014. It is based on freedom of gender expression, self-declaration, and depathologisation.
	<b>Legislation</b>	<p>Law 2/2014, of July 8, integral for non-discrimination on grounds of gender identity and recognition of rights of transgender persons in Andalusia.<sup>484</sup></p>
	<b>Conditions for gender marker change</b>	<p>Article 9. Administrative documentation.</p> <p>1. In order to promote better integration and avoid situations of 'outing' or discrimination, Andalusia will provide to any person requesting it, whatever accreditation of their self-declared identity as may be necessary for access to its administrative services.</p> <p>2. Regulation of the accreditation procedure will be established based on the following criteria:</p> <p>(a) Applications will be made by the persons concerned or, where appropriate, by their legal representatives.</p> <p>(b) The procedures for issuing administrative documents under this Act shall be free; they will not require any intermediary; and in no case will they involve an obligation to provide or accredit any type of medical documentation.</p>

<sup>482</sup> Original name: Ley 3/2007, de 15 de marzo, reguladora de la rectificación registral de la mención relativa al sexo de las personas.

<sup>483</sup> Source: <http://www.lavanguardia.com/vida/20170919/431397357606/trans-derechos-lgtb-igualdad-congreso-sanidad.html> (19.09.17).

<sup>484</sup> Original name: Ley 2/2014, de 8 de julio, integral para la no discriminación por motivos de identidad de género y reconocimiento de los derechos de las personas transexuales de Andalucía.

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



## Community of Madrid [Spain]



**Gender marker change** Possible.



Legislation

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



Conditions for gender marker change

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

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







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

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

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



# Sweden








	<b>Name change</b>	Possible.
	Legislation	Law on Personal Names, 2016: 1013. <sup>485</sup>
	Quote/details	<p>Section 36. The Swedish Tax Agency decides on acquisition or amendment of personal names following an application pursuant to section 3.</p> <p>Section 37. Applications are made in writing to the Swedish Tax Agency. They should include the applicant's name, social security number, address and phone number, and the "circumstances relied on in support of the application".</p> <p>Section 46. A minor over the age of 12 must consent to an application for name change on their behalf.</p>
	<b>Gender marker change</b>	Possible.
	Legislation	Act (1972: 119) on establishing gender in certain cases. <sup>486</sup>
	Conditions for gender marker change	<p>Section 1. an application may be made for a person avowing that they have for a long time felt they belong to the gender to which they wish to change their registry; that they have lived in this gender identity for a period of time and will continue to do so; that they are over 18.</p> <p>Section 2. An application may be made for someone who has "a congenital abnormality/deviation in sexual development" and for whom LGR is "compatible with development... and physical condition". This can apply to minors; the consent of the child is required if they are over 12.</p> <p>Section 3. An application under paragraph 1 or 2 may only be granted if the person is a registered resident of Sweden. The person cannot be in a registered partnership.</p> <p>Minors must apply through their legal guardian. Permission for surgical intervention (either modification or "remov[al of] the genital glands") will only be given following permission for gender marker change and except in exceptional circumstances the applicant must be over 23.</p> <p>Applications are made to the National Health and Welfare Board. They must be accompanied by a medical report stating that the person has undergone the primary "investigation", via psychiatrist, to confirm the "diagnosis of transsexualism".<sup>487</sup></p>

<sup>485</sup> Original name: *Lag (2016:1013) om personnamn*

<sup>486</sup> Original name: *Lag (1972:119) om fastställande av könstillhörighet i vissa fall.*

<sup>487</sup> Source: Foreningen för Transpersoner (Swedish trans organization) <http://fpes.se/om-transtransición>.

# Switzerland

	<b>Name change</b>	Possible, not LGR-specific.
	<i>Legislation</i>	Swiss Civil Code, Article 30.2.a.
	<i>Quote/details</i>	Article 30.2.a of the Swiss Civil Code allows for anyone to change their name for “legitimate reasons”. For trans persons, proof may be required that the new name has already been unofficially in use for a period of time, usually 2 years, along with a doctor’s certification. <sup>488</sup>
	<b>Gender marker change</b>	Possible.
	<i>Legislation</i>	Swiss Civil Code, Article 42.IV.1.
	<i>Quote/details</i>	The Swiss Civil Code provides for modification of civil registry entries by a court. All persons with a legitimate personal interest may request that a judge order the entry, correction, or removal of disputed information to do with civil status. No specific mention is made of gender recognition.
	<i>Conditions for gender marker change</i>	<p>The Swiss courts affirm the right to judicial change of civil status for transgender persons in Federal High Court decision: <i>BGE 119 II 264</i>.</p> <p>This judgment requires “irreversible sex change” but does not specify further. However, other Courts in Zurich<sup>489</sup> and the Bern Jura-Seeland Regional Court<sup>490</sup> have not required surgical interventions before granting gender recognition. The Office Fédéral d’État Civil has also stated in 2012 that it does not require sterilisation as a condition for gender change. It also declared that dissolution of marriage should not be a condition for gender change.<sup>491</sup></p> <p>The application must be filed with the Court of First Instance in the appropriate area. It is possible to ask for a ruling on changing name at the same time as changing gender marker. There is no age limit. A medical report and gender-normative expression are often expected by the Court.</p>

<sup>488</sup> Source: Transgender Network Switzerland.

<sup>489</sup> Source: [http://www.gerichte-zh.ch/fileadmin/user\\_upload/entscheide/oeffentlich/NC090012.pdf](http://www.gerichte-zh.ch/fileadmin/user_upload/entscheide/oeffentlich/NC090012.pdf).













<sup>490</sup> Source: <https://www.transgender-network.ch/wp-content/uploads/2011/09/Zivilgericht-Jura-Urteil-vom-3.9.2012.pdf>.

<sup>491</sup> Source: [https://www.transgender-network.ch/wp-content/uploads/2011/09/2012\\_02\\_01\\_EAZW\\_Kein-Operationszwang.pdf](https://www.transgender-network.ch/wp-content/uploads/2011/09/2012_02_01_EAZW_Kein-Operationszwang.pdf).





# Turkey

	<b>Name change</b>	Possible, specifically provided for with LGR.
	Legislation	Civil Code, Article 27.
	Quote/details	The court can order the changes to be made to the population register. Article 35 of the <i>Population Law</i> <sup>492</sup> also states that without a provisional court judgment, no alteration or annotation can be made to registry information.
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	Legislation	Civil Code, Article 40.
	Quote/details	An individual wishing to change legal gender can do so on application to a court.
	Conditions for gender marker change	Applicant must be over 18 and unmarried. "Continual deprivation of reproductive ability"/sterilisation surgery is required and must be medically certified.
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Criminal Code 2004 (Law No. 5237). <sup>493</sup>
	Quote/details	<p>Article 225. Impudent acts.</p> <p>(2) Any person who openly enters in sexual intercourse or exposes one's self is punished with imprisonment from six months to one year.</p> <p>Article 227. Prostitution.</p> <p>Any person who encourages another person to become a prostitute, or facilitates prostitution, or acts as go-between or provides place for such purpose is punished with imprisonment from two years up to four years, and also impose punitive fine up to three thousand days. Any act aimed to benefit from the income of a person engaged in prostitution to earn one's living, totally or partially, is considered encouragement of prostitution.</p> <p>[DE FACTO CRIMINALISATION]</p>
	Legislation	Law on Misdemeanours 2005 (Law No. 5326). <sup>494</sup>
	Quote/details	<p>Article 31. Anyone who disobeys orders "to protect public security, public order or common wealth" will be subject to a fine of 100 lira.</p> <p>Articles 36. Anyone who "makes noise with a purpose of discomfoting or breaking the peace of others" will be subject to a fine of 50 lira.</p> <p>Article 3. Anyone who "disturbs others to sell goods and services" will be subject to a 50 lira fine.</p> <p>[DE FACTO CRIMINALISATION]</p>

<sup>492</sup> Original name: *Nufus Hizmetleri Kanunu*, Law no. 5490.

<sup>493</sup> Turkey Criminal Code 2004 (Law No. 5237) <https://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>

<sup>494</sup> OutRight Action International, 'Turkey: Change Law of Misdemeanours to End Abuse of Trans People' November 19 2009, <https://www.outrightinternational.org/content/turkey-change-law-misdemeanors-end-abuse-trans-people>



### Situation

There are no laws in Turkey that *de jure* criminalise transgender and gender diverse people. However, in practice, trans people in Turkey are *de facto* criminalised by laws criminalising sex work and the *Law on Misdemeanours*.

Trans and gender diverse people who engage, or are perceived to engage, in sex work are disproportionately targeted under Turkey's sex work laws.<sup>495</sup> Due to the criminalisation of sex work, the industry is largely underground and leaves sex workers vulnerable to economic exploitation, violence, police harassment, administrative fines and house raids.<sup>496</sup> Police are known to have bribed and extorted transgender people who are detained under sex work charges.<sup>497</sup>



### Examples

On 7 March 2017, two sex workers were charged under *Criminal Code, Article 227, Prostitution*. They were arrested for distributing business cards for sex work. In regular circumstances, as their lawyers argued, distributing such materials cannot be penalised. However, law enforcement exploited the powers granted to them under the state of emergency to target sex workers, particularly trans sex workers.<sup>498</sup> Furthermore, in Bursa in July 2017, sex workers (including trans sex workers) were detained and fined under Article 227.<sup>499</sup>

There are also reports that Highway Traffic Regulations are used by police forces to fine trans people, particularly sex workers, on the grounds that they are blocking traffic. One such incident occurred in June 2017 to a group of trans women, but it was clear that they had actually been targeted because of their gender identity.<sup>500</sup>

Under Article 227, to be a sex worker is not criminalised per se, however if a space or building is used for sex work, the owner is criminalised as 'facilita[ing]' and 'provid[ing] place for sex work. Oftentimes, trans sex workers will own a home together; when law enforcement finds them engaging in sex work, they will determine one person as the owner and the other workers. In this circumstance only the 'owner' is criminalised.<sup>501</sup>

Turkey's *Law on Misdemeanours* is frequently used to target and impose fines against trans and gender diverse people, and its enactment in 2005 introduced a variety of vague charges.<sup>502</sup> Kaos GL reported in 2014 that "trans individuals in Istanbul report being stopped by the police while merely walking around or working, and being told that they violate the *Law on Misdemeanours* by 'disturbing the environment.'"<sup>503</sup> It was not reported which Article was used to justify the stop.

The *Law* was challenged in 2017 in the Turkish Constitutional Court. The case was brought by a transgender sex worker who was fined under the *Law* when waiting for a client in 2014.<sup>504</sup> The Constitutional Court ruled

<sup>495</sup> Carsten Balzer/Carla LaGata and Jan Simon Hutta (eds.) *Transrespect versus Transphobia: The social experiences of trans and gender diverse people in Colombia, India, the Philippines, Serbia, Thailand, Tonga, Turkey and Venezuela*, (TGEU, 2015), p. 70. <http://transrespect.org/tvt-publication-series>

<sup>496</sup> *Ibid.*, p. 67; Further, in Turkey, males and females are issued ID cards with different colours, blue and pink respectively. Only people with pink ID cards can register to work at brothels, which are more secure workplaces. This means trans women who have not undergone gender reassignment surgery (a prerequisite for changing an ID card) still have blue cards and cannot access work within brothels. The number of registered workers in Istanbul is below 100 meaning most sex workers work at their home. If caught by police, sex workers can be fined, and the house is red stamped.

<sup>497</sup> US State Department, Human Rights Country Reports: Turkey 2019, 56. <https://www.state.gov/wp-content/uploads/2019/03/TURKEY-2018-HUMAN-RIGHTS-REPORT.pdf>

<sup>498</sup> Consultation with Damla Umut Uzun and the team of Kaos GL Turkey, 5 September 2019; Coverage of the case in Turkish can be found here: <http://www.kaosgl.org/sayfa.php?id=23227>

<sup>499</sup> *Ibid.*; Coverage of the case in Turkish can be found here: <http://www.kaosgl.org/sayfa.php?id=24245>.

<sup>500</sup> *Ibid.*; Coverage of the case in Turkish can be found here: <http://www.kaosgl.org/sayfa.php?id=23950>; This case was brought to the European Court of Human Rights.

<sup>501</sup> *Ibid.*

<sup>502</sup> Kaos GL, Ankara, Human Right Violations of LGBT Individuals in Turkey, UPR 2014 [http://www.kaosgldernegi.org/resim/yayin/dl/upr\\_submission\\_on\\_lgbt\\_ppl\\_in\\_turkey.pdf](http://www.kaosgldernegi.org/resim/yayin/dl/upr_submission_on_lgbt_ppl_in_turkey.pdf), 9; European Commission, *Communication from the Commission to the European Parliament and the Council: Turkey 2010 Progress Report*, 2010, [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2010/package/tr\\_rapport\\_2010\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf); OutRight Action International, 'Turkey: Change Law of Misdemeanours to End Abuse of Trans People' 19 November 2009, <https://www.outrightinternational.org/content/turkey-change-law-misdemeanors-end-abuse-trans-people>.

<sup>503</sup> Kaos GL, Ankara, 2014.

<sup>504</sup> LGBTI News Turkey 'Sputnik: Turkish Constitutional Court Rules Sex Workers Cannot Be Fined on the Law of Misdemeanours' 21 December 2017, <https://lgbtnewsturkey.com/tag/law-of-misdemeanors/>

in favour of the applicant and stated that the procedure carried out by police was not valid and that the Law did not include 'prostitution bargaining'.<sup>505</sup> However, it is still used arbitrarily. The Constitutional Court did not invalidate the Law, there was no change made to it and the police are still able to implement it.<sup>506</sup>

## TURKEY

*Interview with Damla Umut Uzun and the team of Kaos GL Turkey, 5 September 2019.*

### Overall situation for trans people in Turkey

There is an extremely high level of hate crime and violence experienced by trans and gender diverse people in Turkey; there are high levels of physical and sexual violence against trans women in particular.<sup>507</sup>

TGEU's *Trans Murder Monitoring* project reported in 2016 that between 1 January 2008 and 30 April 2016, 43 murders of trans and gender diverse people were recorded.<sup>508</sup> In 2018, at least four trans women were murdered.<sup>509</sup> Further, many trans people face severe violence at the hands of law enforcement, those charged with protecting them. Notwithstanding ill-treatment in detention addressed below, Kaos GL reported five cases of brutal violence against trans people by the police in the past two years.<sup>510</sup> There was also one case of a trans woman, Hande Seker, being murdered by a police officer in her home in 2019.<sup>511</sup>

Transgender human rights defenders have also been consistently harassed and detained.<sup>512</sup> This was evident in the case against staff of LGBT organisation Pembe Hayat, who alleged they were arbitrarily detained on the basis of their gender identity in 2011.<sup>513</sup> In 2016, activist Hande Kader,

who gained wide recognition for her visible protest against police violence in 2015, was found murdered in Istanbul.

As well as the laws that are used to target trans people, law enforcement often arbitrarily stop, search, and fine trans people with no legal basis. In 2018 a trans woman applied to the Chief Public Prosecutor's office in Corum because police forces there had tried to force her into sexual intercourse; when she refused the police fined her and verbally harassed her repeatedly.<sup>514</sup> In May 2018, it was reported that police arbitrarily detained and fined some trans women on the street in Izmir.<sup>515</sup> In September and October 2018 there were reports of trans women being stopped in Ankara and Mersin. In one instance the woman was told "you cannot walk like that" and was fined.<sup>516</sup>

### Deprivation of liberty cases

In 2018, a sub-commission of the Turkish National Assembly Human Rights Commission visited Elazığ Prison and released a report on conditions in the prison. The report stated that LGBT prisoners, notably trans prisoners, were exposed to discrimination and ill-treatment by the guards and

<sup>505</sup> Ibid.

<sup>506</sup> Interview with Damla Umut Uzun and the team of Kaos GL Turkey, 5 September 2019.

<sup>507</sup> Executive Committee for NGO Forum on CEDAW- Turkey, *Turkey: Shadow Report Summary for the 64th Pre-Sessional Working Group of CEDAW (2015)*, [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TUR/INT\\_CEDAW\\_NGO\\_TUR\\_21871\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TUR/INT_CEDAW_NGO_TUR_21871_E.pdf)

<sup>508</sup> TGEU, *Trans Murder Monitoring (TMM)*, 'IDAHOT Press Release: Already 100 reported murder of trans people in 2016,' <http://transrespect.org/idahot-2016-tmm-update>

<sup>509</sup> ILGA Europe Annual Review 2018, Turkey. <https://www.ilga-europe.org/sites/default/files/turkey.pdf>

<sup>510</sup> Interview with Damla Umut Uzun and the team of Kaos GL Turkey, 5 September 2019; Coverage on cases in Turkish can be found here: 15 March 2018, <http://www.kaosgl.org/sayfa.php?id=25358>; 1 May 2018, <http://www.kaosgl.org/sayfa.php?id=25732>; 15 October 2018, <http://www.pembehayat.org/haberler/detay/1925/translar-alikonuluyor>; January 2019, <http://www.kaosgl.org/sayfa.php?id=27360>; April 2019, <https://kaosgl.org/sayfa.php?id=28124>.

<sup>511</sup> Interview with Damla Umut Uzun and the team of Kaos GL Turkey, 2019.

<sup>512</sup> ILGA Europe Annual Review 2018

<sup>513</sup> UN Committee Against Torture, *List of Issues Prior to Reporting: Turkey*, 25th Session, 2015 (CAT/C/TUR/Q/3), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTUR%2fQ%2f3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTUR%2fQ%2f3&Lang=en).

<sup>514</sup> Kaos GL, *LGBTI+ Human Rights Report of 2018 (Report 2018)*, available in Turkish <https://kaosgl.org/page.php?id=28501>

<sup>515</sup> Interview with Damla Umut Uzun and the team of Kaos GL Turkey, 2019; <http://www.kaosgl.org/sayfa.php?id=25777>

<sup>516</sup> Interview with Damla Umut Uzun and the team of Kaos GL Turkey, 2019; <http://kaosgl.org/sayfa.php?id=26561> and <http://www.kaosgl.org/sayfa.php?id=26823>

prison administration.<sup>517</sup> The Association for the Prevention of Torture also highlighted the ‘worrying trend’ of special prisons for gay and trans detainees.<sup>518</sup> A press release from Turkey’s Center for Prison Studies (TCPS) stated that the Ministry of Justice had communicated many times that a LGBTI prison would be opened. TCPS, along with many other civil society organisations, expressed opposition and noted that building separate prisons would lead to discrimination and stigmatisation being ‘institutionalised by the government itself’ and would not necessarily guarantee detainees were protected from violence, particularly from prison administration.<sup>519</sup> In Turkey, as in many other jurisdictions, prisons are binary environments, where a person is placed on account of their sex marker rather than their gender identity.

On 17 August 2017 in Diyarbakır, a trans woman, Diren Coşkun, was arrested for allegedly making propaganda for terrorist organisations. Diren was placed into a men’s prison and, as a vegan, was not served appropriate food for her dietary needs; consequently, she went on hunger strike.<sup>520</sup> On 25 January 2018, following her trial, Diren was sent to Tekirdağ Closed Men’s Prison and went on hunger strike again. During that time, her demands about her transition process such as surgery, epilation, medical and psychological support and her vegan dietary needs were not being fulfilled and she was kept in isolation. She was also subjected to transphobic attitudes from the guards and prison administration, including them calling her by the

name on her ID card. There was a call from Kaos GL to support her hunger strike. Members of the Republican People’s Party and Peoples’ Democratic Party raised her case in Parliament. There was also a separate website established to send her letters.<sup>521</sup> In February 2018, Diren paused her hunger strike because her demands were negotiated.<sup>522</sup> She was released from prison on 17 December 2018.<sup>523</sup>

On 5 June 2018, another trans woman, Buse, who had already been in prison for 23 years, started a hunger strike due to her transphobic ill-treatment in detention. During her sentence, she applied to the authorities many times about her transition process but was rejected every time.<sup>524</sup> She told the authorities, “I don’t want to live in this body anymore, I want to see my body as a woman.” There was huge support for Buse from the outside and she paused her hunger strike on the 38th day.<sup>525</sup> Meanwhile another trans woman, Esra Arıkan, began a hunger strike and took legal action against the prison administration for rejecting her request for mammoplasty surgery numerous times. In August 2019, Arıkan ended her hunger strike after prison administration accepted her requests and she began her transition process.<sup>526</sup>

In April 2018, a trans woman called Ceyda, who was detained by police, allegedly committed suicide by drinking pesticide. There is suspicion about whether it was in fact suicide and many have asked how she obtained pesticide in detention. The case is being investigated.<sup>527</sup>

<sup>517</sup> Ibid; Coverage of the report can be found in Turkish here: <http://www.kaosgl.org/sayfa.php?id=25506>

<sup>518</sup> Association for the Prevention of Torture, *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*, (Report, December 2018), 72, available [https://apt.ch/content/files\\_res/apt\\_20181204\\_towards-the-effective-protection-of-lgbti-persons-deprived-of-liberty-a-monitoring-guide-final.pdf](https://apt.ch/content/files_res/apt_20181204_towards-the-effective-protection-of-lgbti-persons-deprived-of-liberty-a-monitoring-guide-final.pdf).

<sup>519</sup> Turkey’s Center for Prison Studies, ‘The Rumours of Opening and LGBTI Prison in March and Our Requests from the Ministry of Justice’ 21 March 2018, (Press Statement 23) available <http://www.tcps.org.tr/?q=content/rumours-opening-lgbti-prison-march-and-our-requests-ministry-justice>

<sup>520</sup> Interview with Damla Umut Uzun and the team of Kaos GL Turkey, 2019; Coverage of the incident can be found in Turkish here: <http://www.kaosgl.org/sayfa.php?id=24399>

<sup>521</sup> See: <http://mektup.direnesesver.org>

<sup>522</sup> Interview with Damla Umut Uzun and the team of Kaos GL Turkey, 2019; Coverage of the incident can be found in Turkish here: <http://www.kaosgl.org/sayfa.php?id=25110>

<sup>523</sup> Ibid.

<sup>524</sup> Ibid.; Coverage of the incident can be found in Turkish here: <http://www.kaosgl.org/sayfa.php?id=26140>













<sup>525</sup> Ibid.; Coverage of the incident can be found in Turkish here: <http://www.kaosgl.org/sayfa.php?id=26276>

<sup>526</sup> Ibid.; Coverage of the incident can be found in Turkish here: <https://www.kaosgl.org/sayfa-bulunamadi>

<sup>527</sup> Ibid.




# Ukraine

	<b>Name change</b>	Possible.
	Legislation	Civil Code of Ukraine, Article 295.
	Quote/details	Article 295. The right to a name change. An individual who has attained the age of sixteen is entitled at their discretion to change their name.
	<b>Gender marker change</b>	Possible.
	Legislation	Fundamentals of Ukrainian legislation on health care, document 2801-XII.
	Quote/details	Article 51. Change (correction) of gender  At the request of the patient, according to the medical-biological and socio-psychological indications established by the central executive body, which ensures the formation of the state health policy, he may be changed (corrected) by medical intervention in health care institutions. his gender.  A person who has undergone a gender change is issued a medical certificate, on the basis of which the issue of appropriate changes in its legal status is resolved.
	Legislation	Order No 1041 of the Ministry of Health "On establishing biomedical and psychosocial indications of change (correction) of sex and approval of the form of primary records and instructions for its completion." <sup>528</sup>
	Conditions for gender marker change	The Order establishes the "medical and biological indications" for allowing gender marker change as being "transsexualism" per the ICD-10. It also cites "socio-psychological indications": "discomfort or distress due to the discrepancy between the gender identity of the individual and the gender assigned to them at birth (and the related gender roles, and/or primary and secondary sexual characteristics)".  With these conditions being met, the procedures are administrative.
	<b>Laws used against transgender and gender diverse people<sup>529</sup></b>	
	Legislation	Criminal Code of Ukraine. <sup>530</sup>
	Quote/details	Article 307. Illegal production, manufacture, acquisition, storage, transportation, carriage or distribution of narcotic drugs, psychotropic substances or their analogues.  [DE FACTO CRIMINALISATION]
	Situation	There are no laws <i>de jure</i> targeting trans people in Ukraine. However, there are laws that leave trans people very vulnerable to being <i>de facto</i> targeted and, in some cases, this has manifested in arrest and detention.  The laws highlighted in this section are not repetitively and systematically used against trans people. However, their existence is a

<sup>528</sup> Source: <https://zakon.rada.gov.ua/laws/show/z1589-16>

<sup>529</sup> There are certain provisions in Ukrainian legislation that pose a *potential threat* of criminalisation to trans and gender diverse people. The Code of Administrative Offences, Article 173, Small hooliganism and Article 181, Engagement into prostitution, could both be used against trans people. First, Article 173's vague language- "*other similar actions that violate the public order and peace of citizens*" -could be interpreted by prejudiced law enforcement on the basis of gender identity and gender expression or when people's documents do not match their gender identity. Second, Article 181 could be used to target sex workers and even trans people who gather together could be at risk.

<sup>530</sup> See law in Ukrainian here: <https://zakon.rada.gov.ua/laws/show/2341-14>; Information and translation from Inna Iryskina, Insight NGO Ukraine.

		<p>potential threat to trans people and may be used by discriminatory and prejudiced law enforcement. For example, in <i>Code on Administrative Offences</i>, Article 173, Small hooliganism, “other similar actions that violate the public order and peace of citizens”, is vague and could be interpreted by prejudiced law enforcement against people on the basis of their gender expression or when their documents do not correspond to the gender expression.<sup>531</sup></p> <p><i>Code on Administrative Offences</i>, Article 181, “Engagement in prostitution” could be used to target trans sex workers and even groups of trans people who gather together could be at risk.<sup>532</sup></p>
	<p><i>Examples</i></p>	<p>TGEU reported that abuses against LGBTIQ people by law enforcement is widespread, including arbitrary arrests, blackmail, and threats.<sup>533</sup></p> <p>Article 307 of the <i>Code on Administrative Offences</i>, which is often used by authorities who plant drugs on people, can also be used against trans people. There is at least one instance in which a customs officer found hormones in the bag of a trans person at the border. The officer requested a bribe for not taking the person off the train to examine their hormones – he did not reference any specific article however.<sup>534</sup></p>

<sup>531</sup> Information from Inna Iryskina, Insight NGO Ukraine.







<sup>532</sup> Ibid.

<sup>533</sup> Boglarka Fedorko (ed.), *For the Record: Documenting Violence Against Trans People* (TGEU, 2015), 86. [tgeu.org/pro-trans](http://tgeu.org/pro-trans)

<sup>534</sup> Information from Inna Iryskina, Insight NGO Ukraine.



# United Kingdom

	<b>Name change</b>	Possible.
	<i>Quote/details</i>	Change of name for identification purposes is possible by deed poll.
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	<i>Legislation</i>	<i>Gender Recognition Act 2004 (2004, Chapter 7).</i>
	<i>Quote/details</i>	<div style="border: 1px solid #ccc; padding: 5px;"> <p><i>Part II, Section 9. (1) Where a full gender recognition certificate is issued to a person, the person's gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman).</i></p> </div>
	<i>Conditions for gender marker change</i>	<p>The applicant must be "living in the other gender" or have been granted legal gender recognition by another state (1(1) (a) and (b)). The application will be determined by a Gender Recognition Panel (1(1) 3). The applicant must have/have had gender dysphoria; they must be living in the "acquired gender" for two years before the application; they must intend to remain of that gender for the rest of their life (2(1) (a), (b), (c).)</p> <p>The applicant must be at least 18 (1(1)).</p> <p>The applicant must supply either: (3(1))</p> <ul style="list-style-type: none"> <li>(a) a report made by a registered medical practitioner practising in the field of gender dysphoria and a report made by another registered medical practitioner (who may, but need not, practise in that field), or</li> <li>(b) a report made by a registered psychologist practising in that field and a report made by a registered medical practitioner (who may, but need not, practise in that field).</li> </ul> <p>This report must include details of the applicant's gender dysphoria (3(2)) and medical interventions undergone or planned (3(3)).</p> <p>They must also report if they are married or in a civil partnership (3(6) (a)). Dissolution of the marriage is required before a change of gender can be recognised. Until the applicant's marriage is annulled, an interim gender recognition certificate will be supplied (4(3) and 4(4); 5(1) through (7); 5(A) in the event that the union is a civil partnership).</p>

# Latin America and the Caribbean

by Matilda González Gil

## *Legal gender recognition*

In almost every country in Latin America and the Caribbean changing one's name is possible, with some exceptions in the Caribbean and Central America. Antigua and Barbuda, Argentina, Bahamas, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Panamá, Paraguay, Perú, Saint Lucia and Venezuela all allow for name change. In Paraguay anyone can change their names, but it is not clear if this extends to trans persons. On the other hand, Belize, Dominica, Grenada and Nicaragua do not allow name change. While as a general rule, El Salvador does not allow name change but there have been a few exceptions.

In Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Paraguay and Saint Lucia it is not possible to change the gender marker in birth certificates or identity cards. Nevertheless, some "mini-steps" in the right direction are found in some of these countries. Again El Salvador does not allow gender marker change but in a few exceptional cases some trans persons could do so after having had genital surgeries and with forensic proof to "verify" the surgeries.

In Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Panamá, Perú and Uruguay it is possible to change gender markers without surgical or sterilisation requirements. Nevertheless, there are some obstacles with implementation. In Perú, the Civil Code does not give guidance to the courts on sex marker change processes (only name change), and the Gender Identity Bill is still pending debate before the Congress since 2016.

Some of these countries have taken significant steps towards legal gender identity recognition. In 2019, **Mexico's** Supreme Court of Justice declared that a judicial process to recognise gender identity was unconstitutional, paving the way for a simpler administrative rather than judicial process in all national territories. Similarly, **Brazil's** Supreme Court unanimously removed medical and judicial criteria for trans persons.

In **Venezuela** and **Cuba** gender marker change is possible with prohibitive requirements. Venezuela's Tribunal recognises the right of persons to change their identity and sex marker following medical, psychiatric and psychological examinations. Nevertheless, the Constitutional chamber admitted constitutional actions by several citizens who seek legal gender recognition without medical requirements.

In Latin America and the Caribbean, if we were to create a legal gender recognition spectrum, we would have on one end countries that do not allow name and sex change at all; while the other end of the spectrum would have Argentina and Costa Rica. **Argentina** not only allows one to change one's name and sex marker without surgical requirements but has also recognised two more options other than "male" or "female". A 2018 Resolution ordered a Civil Registry to record just a line ("-") as a person's gender marker. Meanwhile a Court ordered the rectification of a person's identity document to "travesti feminine".

Gender markers are no longer used in identity documents for citizens in **Costa Rica**. Nevertheless, a trans man from Venezuela was able to change his gender marker in his Costa Rican Dimex (migrant identity card).



## *Trans children and young people*

Despite ongoing resistance, some important victories have taken place in the legal recognition of gender identity for trans persons under 18 years old. **Chile** now has partial recognition due to a judicial procedure for persons over 14 and under 18 years old. In 2018, a court in **Ecuador** ordered the Civil Registry to amend the name and gender marker of a 9-year-old trans girl. That decision was appealed, and the second instance judge partially revoked it. Nevertheless, the girl retains her amended documents and the case is now before the Constitutional Court awaiting a final decision.

In **Colombia** in 2019, the Constitutional Court concluded in a case of a 10-year-old trans child that the absence of an expedited administrative mechanism to modify a minor's gender marker was a violation of their fundamental rights. The court set out principles for how administrative processes for trans persons under 18 years old should be, including prohibiting the need for medical requirements because it said, amongst other things, that gender identity is formed between the ages of 5 and 7 years, that it can only be self-determined, and to ensure the decision of the child or adolescent is free, informed and qualified, and without coercion.

**Uruguay** partially recognises the gender identity of persons under 18 years of age, with the consent of one parent or legal representative.

## *Criminalisation*

The most common laws used against trans persons in the region are laws that prohibit consensual sex between consenting adults, laws that (directly or indirectly) criminalise sex work, for instance, morality laws, public space regulations, drug laws and police identity control laws.

Although **Colombia's** Constitutional Court has clearly determined that sex work is considered valid employment, in practice land management plans and public space regulations are used to harass sex workers. Similar displacement of sex workers, mostly in small cities, occurs in **Uruguay** despite a Sex Work Law. While in **Cuba**, police raids are used to "prevent" trans women from being in areas considered prone to prostitution. They are detained, fined and threatened so that they do not "dress as women" and may then be classified under a danger index for antisocial behaviour.

In this region, drug laws are used to criminalise trans persons, for example in Bolivia, Colombia, Dominican Republic and Ecuador. In **Bolivia**, drug possession is often used as a reason, even with alleged false accusations, to harass and even incarcerate trans sex workers and their clients. In **Colombia**, 40% of LGBTI persons that are incarcerated, and 30% of trans persons, are done so under drug offences. **Ecuador** also reports high rates of incarcerated trans persons through drug related crimes.

Morality, good manners and coexistence codes and public space policies are often used against trans persons in Chile, Dominican Republic, El Salvador, Honduras, Perú and Venezuela. In **Chile**, broadly defined regulations where anyone who offends morality or good manners through acts of "serious scandal or transcendence", are used to arrest and imprison trans women. In **Colombia**, regulations regarding "behaviours that affect tranquillity and respectful relationships" and those against the integrity of public spaces are often used against trans persons. In **El Salvador**, the offence of "obscene exhibitionism" is used to criminalise trans persons which is also exacerbated by the wide scope judges have with trans persons receiving the highest penalties. Police in **Honduras** may arrest "street prostitutes" and anyone who exhibits behaviour that "goes against modesty, good manners and public morals".

Additionally, in **Chile** and **Peru**, identity control laws, which allow police officers to, without prior order from prosecutors, request a person's identification, are often used against trans persons. In 2019 during a wave of protests in Chile, identity control was reported to have been used to profile trans feminine gender expressions. In 2020, the Inter-American Court of Human Rights determined that the detention of a trans woman (who at the time identified as a gay man) was

illegal, given that it did not follow the legal requirements for detention for identification processes. The Court said that the detention was carried out for discriminatory reasons, in part because there was an absence of a reason for an identity check.





We found that in Argentina, Bolivia, Ecuador and Uruguay, there have been creative legal strategies to protect the rights of trans persons, or to reform laws that are often used to criminalise. In 2018, a municipal law was approved in La Paz, **Bolivia**, regulating spaces where self-managed sex work takes place, in which the municipality must give an authorization for the purposes of preventing trafficking, sexual exploitation and profiting from sex work. Since 2002, the Transgender Project **Ecuador** has been working with trans sex workers on “paralegal activism on the streets” – using itinerant legal patrols to prevent arbitrary detention, offer preventive legal advice, mediate conflict and intervene in cases of police violence and discrimination in health settings. In a 2018 case in **Argentina** where a group of trans women were accused of selling drugs, the prosecutor requested the case be dismissed based on the structural vulnerability of their lives.

### **Reparations**

Finally, an interesting legal narrative seems to be taking hold in Latin America to compensate trans persons that have been victims of criminalisation. In Ecuador in 2019, civil society organizations presented a lawsuit against the government for serious violation of human rights, persecution and crimes against humanity faced by LGBTI persons during the process of decriminalising homosexuality in 1997, where dozens of trans persons were victims of torture and cruel and inhuman treatment. Meanwhile **Uruguay**’s Integral Trans Law establishes a reparatory regime for trans persons born before 1975, who certify that for reasons related to their gender identity, they were victims of institutional violence or were deprived of their liberty.



## Antigua and Barbuda

	<b>Name change</b>	Possible.
	<i>Legislation</i>	<i>Registration and Records Act, Chapter 375.</i>
	<i>Quote/details</i>	A request is filed through the Registry of the High Court. <sup>535</sup>
	<b>Gender marker change</b>	Not possible.

<sup>535</sup> Source: Alexandria Wong, President of Women Against Rape Inc, Antigua and Barbuda, 15 November 2019.



# Argentina

	<b>Name change</b>	Possible. See gender marker change information below.
	<b>Gender marker change</b>	Possible, without prohibitive requirements.
	<i>Legislation</i>	<p>Act 26.743/2012 <i>Gender Identity Law (trans-specific)</i> states that total or partial reassignment surgery, hormone therapies or any medical or psychological treatment, are not needed.</p> <p>This Act does not apply to persons that do not want a record in their sex marker field (e.g. gender neutral or no gender marker).</p>
	<i>Documents amended</i>	Birth certificate, national identity card.
	<i>Conditions for gender marker change</i>	<p>Anyone is entitled to request the rectification of sex marker, name and/or picture in the civil registry when any or all of these features are contrary to the petitioner's gender identity. These procedures are considered as part of the recognition and guarantee of the right to gender identity. The petitioner must meet the following requirements:</p> <ol style="list-style-type: none"> <li>1. Be at least 18 years old, unless authorization of the legal representatives of the child is taken and a lawyer is present to assist with the application. But even if "the consent of any of the minor's legal representative is denied or impossible to obtain", the judge may rule in favour of the child "taking into account the evolving capacities and best interest of the child as expressed in the Convention on the Right of the Child".<sup>536</sup></li> <li>2. Submit an application to the Office of National Registry of Persons. Birth certificates are amended and new national identity cards are issued with the original number retained.</li> <li>3. To provide the new first name they want to be registered in.</li> </ol> <p>Once the requirements are met, "the public officer will proceed—without any additional legal or administrative procedure—to notify the amendment of the sex and the change of first name to the Civil Register corresponding to the jurisdiction where the birth certificate was filed so that it will issue a new birth certificate incorporating the said changes, and to issue a new national identity card reflecting the amended sex and the new first name as now recorded".<sup>537</sup></p> <p>Argentina has also recognised two more sex marker categories. A 2018 Resolution ordered a Civil Registry to record a line ("-") under the sex marker of a person's birth certificate.<sup>538</sup> Meanwhile, a Court in Buenos Aires ordered its Civil Registry to rectify a person's identity document to "Travesti feminine" instead of "Female".<sup>539</sup> In the same judgement, the Court established that these cases should continue to be processed administratively and should make available a multiplicity of gender marker options.</p>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Legislation</i>	<i>Criminal Code of Argentina.</i> <sup>540</sup>
	<i>Quote/details</i>	Article 14, Law 23737 of 1989, <i>Drug Possession</i> .




<sup>536</sup> Article 5, Act 26.743 / 2012: <http://tgeu.org/argentina-gender-identity-law/>.

<sup>537</sup> Article 6, Act 26.743 / 2012: <http://tgeu.org/argentina-gender-identity-law/>.

<sup>538</sup> General Director of Civil Registry and the Capacity of People. Resolution 420, Mendoza, Argentina. 1 November 2018.

<sup>539</sup> Judicial Power of the Nation, Civil Judge 7. Judgement 48756/2018, Buenos Aires, Argentina, March 2019.

<sup>540</sup> Law 11.179, Criminal Code of the Nation of Argentina: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm>

		<p><i>Anyone who has in his power narcotics will be repressed with one to six years of imprisonment and a fine between three hundred to six thousand pesos.</i></p> <p><i>The penalty will be between one month to two years in prison, when, due to the small amount and other circumstances, it appears unequivocally that the possession is for personal use.</i><sup>541</sup></p> <p><i>Article 129, Obscene Exhibitionism.</i></p> <p><i>Article 2, Law 26,842, Prevention and Sanction on the Trafficking of Persons and Assistance to its Victims.</i></p> <p><i>Human trafficking is understood as the offer, acquisition, transfer, reception or welcoming of persons for purposes of exploitation... [and the] promotion, facilitation or commercialisation of prostitution of others or any other form of sexual services.</i></p> <p><i>Consent given by the victim of trafficking and exploitation will not constitute exemption of the criminal, civil or administrative responsibility of the authors, participants, co-operators or instigators.</i></p>
	<b>Legislation</b>	Provincial Codes of Contraventions and Faults
	<b>Quote/details</b>	<p>Eighteen of the 24 provinces in Argentina criminalise with fines or arrest of up to 30 days for those offering sexual services on the streets.<sup>542</sup> Further, 12 provinces have decrees that prohibit cabarets, dating houses, bars, clubs and private places where sex work is carried out.<sup>543</sup> These decrees have led to cases of “detention for investigation of identity.”<sup>544</sup></p> <p>[DE FACTO CRIMINALISATION]</p>
	<b>Situation</b>	<p>According to reports from national civil society and international human rights organisations, trans persons are criminalised through the significant number of cases filed against them for the crimes of drug possession and trafficking. These occur within the framework of police prevention, where trans persons receive insults, threats and intimidation by the police. They are also subject to searches, forced nudity (carried out by male police officers) and “third party violence” caused by police incitement of violence.<sup>545</sup></p> <p><i>Law 26,842: Prevention and Sanction on the Trafficking of Persons and Assistance to its Victims</i> prohibits any conduct that facilitates or promotes sex work of other persons, whether adult or minor, regardless of whether the person has given consent. Sex work can only be exercised as a self-managed activity.<sup>546</sup> This law confuses trafficking with sex work and impedes sex workers from working collectively and in an organised way, because all the places where sex work can be exercised are criminalised.<sup>547</sup> Further, some municipal governments have applied “relocation” policies to displace trans sex workers after complaints from residents of the so-called “Red Zone.”<sup>548</sup></p> <p>In 2009, the Supreme Court decided in the Arriola case that possession of drugs for personal use when it does not pose any danger or harm to others cannot be criminalised. The broad language of this judgment, and</p>

<sup>541</sup> “The penalty... can be replaced by detoxification and rehabilitation treatment” (Article 17, Law 23737 of 1989) Rodríguez-Ferrand, Graciela. Library of Congress, Decriminalization of Narcotics: Argentina, July, 2016: <https://www.loc.gov/law/help/decriminalization-of-narcotics/argentina.php>

<sup>542</sup> AMMAR: Asociación de Mujeres Meretrices de Argentina. AMMAR y FUERTSA lanzan campaña contra la violencia policial, 4 October 2017: <http://www.ammr.org.ar/AMMAR-y-FUERTSA-lanzan-campana.html>. Also see table at page 4, INECIP: Instituto de Estudios Comparados en Ciencias Penales y Sociales. El trabajo sexual en los códigos contravencionales y de faltas en Argentina, 1 June 2013: <http://inecip.org/wp-content/uploads/El-trabajo-sexual-en-los-c%C3%B3digos-contravencionales-y-de-faltas-en-Argentina.pdf>

<sup>543</sup> Sputnik Mundo, “Trabajadoras sexuales argentinas piden ley para “descriminalizar” su labor”, 19 July 2018: <https://mundo.sputniknews.com/america-latina/201807191080551251-trabajadoras-sexuales-argentina-derechos-laborales/>

<sup>544</sup> Heartland Alliance for Human Needs and Human Rights, Observatorio de Violencia de Género de la Defensoría del Pueblo de la Provincia de Buenos Aires (OVG); Abosex (Abogad\*s por los Derechos Sexuales), Akahatá, Informe para el Tercer Informe Hemisférico sobre la Implementación de la Convención de Belém do Pará (2017): <https://www.oas.org/es/mesecvi/docs/Round3-ShadowReport-Argentina-ABOSEX.pdf>

<sup>545</sup> Ibid.

<sup>546</sup> Ibid.

<sup>547</sup> AMMAR, see above.

<sup>548</sup> Heartland Alliance for Human Needs and Human Rights et al, see above.

the fact that it is not binding on lower courts, has led to judges continuing to prosecute drug users.<sup>549</sup>

In April 2018, five trans women were accused of selling drugs. The prosecutor requested the case be dismissed based on the “structural vulnerability” of the women’s lives.<sup>550</sup> Importantly, this set a precedent for how such cases could be argued. In September 2019, the same prosecutor issued another Opinion in requesting for the dismissal of a case against an immigrant trans woman (from Perú) who was accused of selling drugs.<sup>551</sup>

Also, in September 2019, a judge was suspended and could be removed from office for allegedly aggravating the conviction of a trans woman who is a migrant from Peru.<sup>552</sup> In 2016, the judge sentenced the woman to jail for five years and three months for the possession of 1.5 grams of cocaine.

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<sup>549</sup> Rodríguez-Ferrand, Graciela, see above.



<sup>550</sup> Picardi, Franco E. Federal Prosecutor No. 5 Opinion, 9 April 2019 (p.17): [https://es.scribd.com/document/406486130/Dictamen-Elevacion-a-Juicio-Parcial-y-Sobreseimiento-Mujeres-Trans-Estado-de-Necesidad#from\\_embed](https://es.scribd.com/document/406486130/Dictamen-Elevacion-a-Juicio-Parcial-y-Sobreseimiento-Mujeres-Trans-Estado-de-Necesidad#from_embed)

<sup>551</sup> [agenciapresentes.org](http://agenciapresentes.org); Ludeña, María Eugenia; Fornaro, Ana. Piden sobreseer a una trans acusada por drogas por su vulnerabilidad, 2 September 2019: <http://agenciapresentes.org/2019/09/02/piden-sobreseer-a-una-trans-acusada-por-drogas-por-su-vulnerabilidad/>

<sup>552</sup> LARIN; Debesa, Fabián, “En La Plata suspenden a un juez que agravó la condena de una trans por ser extranjera”, 17 September 2019: [https://www.clarin.com/policiales/suspenden-juez-agravo-condena-trans-extranjera\\_0\\_1h8A3Cl.html](https://www.clarin.com/policiales/suspenden-juez-agravo-condena-trans-extranjera_0_1h8A3Cl.html)



## Bahamas

	<b>Name change</b>	Not possible. <sup>553</sup>
	<b>Gender marker change</b>	Not possible. <sup>554</sup>

<sup>553</sup> Source: Alexis D'Marco, The D'Marco Foundation.

<sup>554</sup> Ibid.



## Barbados

	<b>Name change</b>	Possible.
	<i>Legislation</i>	<i>Change of Name Act, 1981-17, section 19(1).</i>
	<i>Quote/details</i>	The process takes approximately 6-8 weeks through an application to the Registrar of the Supreme Court and costs \$205 (Barbados dollars). The applicant then receives a Registrar's Certificate stating the new name with an official seal, a new amended birth certificate and an official receipt. <sup>555</sup>
	<b>Gender marker change</b>	Not possible.
	<i>Quote/details</i>	<p><b>Note:</b> The country is discussing legal gender recognition. There is a draft proposal of a labour law to protect people from employment discrimination in Barbados. However, there is only consensus to include sexual orientation but not gender identity in the Bill.<sup>556</sup></p>






<sup>555</sup> Source: Raven Gill, Butterfly Barbados: <http://www.butterflybarbados.com/>

<sup>556</sup> Ibid.





## Belize

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Legislation</i>	Criminal Code, section 53.
	<i>Situation</i>	The Supreme Court held in <i>Orozco v. Attorney General of Belize</i> that “the criminalisation of consensual same-sex intimacy under section 53 of the Criminal Code was “in breach of the dignity of the Claimant and in violation of section 3(c) [of the Constitution of Belize]”. Even though the cases focus on gay men, the same principle applies to trans persons. <sup>557</sup>

<sup>557</sup> *Caleb Orozco v. Attorney General of Belize*, Supreme Court of Belize, 10 August 2016, para. 67. Source: Human Dignity Trust, *Injustice Exposed*.




# Bolivia

	<b>Name change</b>	Possible. See gender marker change information below.
	<b>Gender marker change</b>	Possible, without surgical/sterilisation requirements.
	<i>Legislation</i>	Act 807/2016, Gender Identity Law.
	<i>Conditions for gender marker change</i>	<p>The <i>Gender Identity Law</i> determines the procedure for name, sex marker and personal photograph change in identity documents of trans persons. The data can be changed only once.</p> <p>The competent authority for regulation and modification of documents is the Civil Registry Service. Requirements:</p> <ol style="list-style-type: none"> <li>1. A letter enlisting name and sex, both given and requested;</li> <li>2. Psychological examination attesting that the petitioner consents the decision;</li> <li>3. Original birth certificate;</li> <li>4. Certificate of personal remarks from the General Service of Personal Identification (SEGIP in Spanish);</li> <li>5. Certificate of marital status;</li> <li>6. Certificate of offspring;</li> <li>7. Criminal Record Certificate;</li> <li>8. Updated personal photograph.</li> </ol> <p>Those living abroad may apply by proxy. The process should take a maximum of 15 calendar days from the application date. The change cannot be denied without the petitioner being given the opportunity to rectify any issues. After 15 days, the Resolution of the Civil Registry Service notifying the amendment of sex marker, name and personal photograph of the petitioner is sent to institutions relating to identification, banking, immigration, tax, registration of property, criminality and the police, education, defence, insurance and any other records that the applicant requires.</p> <p>On November 2017, the Constitutional Plurinational Tribunal of Bolivia declared one part of the <i>Gender Identity Law</i> (Article 1, paragraph II) unconstitutional. This part refers to rights and obligations of persons that change their gender markers. According to the media, it was a veto for trans persons to get married or adopt.<sup>558</sup> Some couples, with at least one trans partner, did marry when the Law, as a whole, was valid. The status of these marriages is presumably valid; however, the Tribunal's judgement makes them legally uncertain.<sup>559</sup></p>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Legislation</i>	Law 1008 of 1998 on the Regime of Coke and Other Controlled Substances. <sup>560</sup>
	<i>Quote/details</i>	<p><i>Article 35, Prohibition of Possession or Deposit.</i></p> <p><i>No natural or legal person may have or possess in any form, quantity or any place, drugs or drugs that contain or are controlled substances, without prior authorization from the Ministry of Social Welfare and Public Health, consulted to the National Council Against Drug Abuse and Illicit Trafficking.</i></p> <p><i>Article 37, Traffic and Consumption.</i></p> <p><i>Traffic, fractioning and consumption of controlled substances is prohibited.</i></p>

<sup>558</sup> La Razón Digital. José Luis Columba: TCP declara inconstitucional el matrimonio entre trans, 10 November 2017.

<sup>559</sup> Source: <http://ovejarosa.com/bolivia-anula-derecho-contraer-matrimonio-las-personas-trans/>, 13 November 2017.

<sup>560</sup> Source: <http://www.dgsc.gob.bo/normativa/leyes/1008.html>

	<p>In 2018 a municipal law was approved in La Paz regulating spaces where self-managed sex work takes place. According to the local government, this was the result of a civil society initiative (with support from other organizations) and after consultation with 20 state institutions. The law establishes that the municipality must give an authorisation for the purposes of preventing trafficking, sexual exploitation and profiting from sex work.<sup>561</sup></p>
	<p><i>Situation</i></p> <p>Civil society organizations that work for trans rights in Bolivia report that drug possession is used as an excuse (sometimes allegedly with false accusations or set ups) to harass trans sex workers and their clients. In some instances, they are incarcerated.<sup>562</sup></p>

<sup>561</sup> Source: <http://www.concejomunicipal.bo/concejo/2019/02/14/alcaldia-ratifica-que-ley-que-regula-el-trabajo-sexual-autogestionado-combate-el-proxenetismo/>

<sup>562</sup> Source: [https://issuu.com/redlactrans/docs/informe\\_cedostalc\\_2018\\_-\\_bolivia](https://issuu.com/redlactrans/docs/informe_cedostalc_2018_-_bolivia)



## Brazil

	<b>Name change</b>	Possible. See gender marker change information below.
	<b>Gender marker change</b>	Possible, without surgical/sterilisation requirements.
	<i>Conditions for gender marker change</i>	<p>In May 2017, the Superior Tribunal of Justice heard a case of a trans person who wanted to change the gender marker in their identification documents, giving as proof an expert psychological evaluation. The Court decided that the applicant could change the gender marker without needing surgeries. This case could be relied upon in lower courts. The Judgement also prohibited civil registry offices from recording the terms “transsexual”, “biological sex” or the reasons for the proceedings.<sup>563</sup></p> <p>In March 2018, the Supreme Court unanimously removed medical and judicial criteria for all trans persons to change their names and legal gender. Prior to the decision, some trans persons were able to do so only after psychiatric evaluations, surgeries and judicial orders from the Public Prosecutor.<sup>564</sup></p>

<sup>563</sup> Source: [https://www.14ymedio.com/internacional/transsexuales-Brasil-cambiar-documentos-operarse\\_0\\_2215578430.html](https://www.14ymedio.com/internacional/transsexuales-Brasil-cambiar-documentos-operarse_0_2215578430.html)

<sup>564</sup> Ibid.



# Chile

	<b>Name change</b>	Possible. See gender marker change information below.
	<b>Gender marker change</b>	Possible, without surgical/sterilisation requirements.
	<i>Legislation</i>	<i>Law 21.120, Recognizes and Protects the Right to Gender Identity.</i>
	<i>Conditions for gender marker change</i>	<p>Any adult may, up to two times, obtain rectification of the sex and name to be consistent with her/his gender identity.<sup>565</sup> The competent authority is the Civil Registry and Identification Service.<sup>566</sup></p> <p><b>I. Requirements for Chilean adults (administrative procedure):</b></p> <ol style="list-style-type: none"> <li>1. Valid identity card or fingerprints (to verify the veracity of the identity of the person).<sup>567</sup></li> <li>2. Not being married</li> <li>3. Civil Registry and Identification Service shall, as soon as possible, summon the applicant and two competent witnesses to a special hearing.</li> <li>4. No additional information may be required in order to accept the application</li> </ol> <p>Within a maximum period of forty-five days from the filing of the application, the National Director of the Civil Registry and Identification Service shall issue the corresponding order of service, which may accept or reject the application on reasonable grounds, or declare it inadmissible.<sup>568</sup> The application shall only be rejected on the ground that the applicant has not proved her/his identity or that the statement of the applicant and of the competent witnesses has not been verified in the terms indicated in the second paragraph above.</p> <p>The application shall be declared inadmissible only when:</p> <ol style="list-style-type: none"> <li>a) It is formulated by a person who has not reached the age of majority</li> <li>b) It is formulated by a person with an undissolved marriage relationship</li> </ol> <p>In case of inadmissibility of the application, the Civil Registry and Identification Service shall inform the applicant of the judicial procedures established by this law.</p> <p><b>II. Requirements for foreigners<sup>569</sup> (administrative procedure):</b></p> <ol style="list-style-type: none"> <li>1. Foreigners may only rectify their sex and name for the purposes of issuing Chilean documents.</li> <li>2. They must register their birth at the Santiago office of the Civil Registry and Identification Service.</li> <li>3. Prove their permanent residence in Chile.</li> </ol> <p><b>III. Requirements for persons over fourteen and under eighteen years of age (judicial procedure):</b></p> <p>The competent authority is the court in family matters corresponding to the domicile of the applicant.<sup>570</sup></p> <ol style="list-style-type: none"> <li>1. They may request rectification of name and sex, but once they are eighteen years old, they may require a new rectification.</li> <li>2. The request for rectification must be presented by their legal representatives or one of them, at the election of the applicant.</li> </ol>

<sup>565</sup> Law 21.120, article 9.

<sup>566</sup> Ibid., articles 9 and 10.

<sup>567</sup> Ibid.

<sup>568</sup> Ibid., articles 9 and 11.

<sup>569</sup> Ibid., articles 7 and 9.

<sup>570</sup> Ibid., article 13.

3. Application must include factual and legal background, reasons according to which the claim is beneficial.

4. The application may be accompanied by the psychosocial and family context.

Within a period of fifteen days, there is a preliminary hearing with the persons that submitted the application.<sup>571</sup> On the same date, after this hearing, the court shall convoke the mother, father or legal representative that did not accept the application. Immediately after, the court shall hold a preparatory hearing. Applicants or the judge can summon specific persons to testify. If the application did not include psychological or psycho-social proof, the court may order a report stating that “the over fourteen and under eighteen years of age and their family have received professional accompaniment for at least one year prior to the application” or a report that “rules out the determinant influence of third parties, such as the father, mother, legal representative, or who legally cares for the person, or other significant adults.”<sup>572</sup>

In no instance may the court order physical examinations.

Finally, there is a hearing with a final decision ordering the Civil Registry and Identification Service to rectify the applicant’s birth certificate.



## Laws used against transgender and gender diverse people



Legislation

*Criminal Code of Chile.*<sup>573</sup>



Quote/details

Article 373. Anyone who in any way offends moral or good manners with acts of serious scandal or transcendence, not expressly included in other articles of this Code, will suffer the lesser penalty of imprisonment in its minimum to medium grades.



Legislation

*Law 20.000 of 2005, Sanctions the illicit traffic of narcotics and psychotropic substances.*<sup>574</sup>



Quote/details

Article 2, 4, and 50. “production, manufacturing, processing, distribution, transportation, marketing, import, export, possession of... transport, store or carry... Anyone who consumes... in public places or open to the public.”



Legislation

*Health Code of Chile, Decree with force of Law No. 725.*<sup>575</sup>



Quote/details

Article 41. Anyone who engages in sex trade, a health statistic will be kept, not allowing their grouping in closed brothels or houses of tolerance.



Legislation

*Criminal Procedure Code.*<sup>576</sup>



Quote/details

Article 85. Identity Control. Police officers shall, without prior order from the prosecutors, request the identification of any person in the cases founded, in which, depending on the circumstances, consider that there are indications of an attempted or committed crime, simple crime or committed or attempted to commit a crime, simple crime or fault.



Examples

According to reports from civil society, Article 373 of the Criminal Code punishes offenses to “moral and good manners” and has been used to arrest and imprison trans women.<sup>577</sup> A trans activist explained that Chile

<sup>571</sup> Ibid., article 16.

<sup>572</sup> Ibid., article 17.

<sup>573</sup> Source: [https://www.oas.org/dil/esp/Codigo\\_Penal\\_Chile.pdf](https://www.oas.org/dil/esp/Codigo_Penal_Chile.pdf)

<sup>574</sup> Source: <https://www.leychile.cl/Navegar?idNorma=235507>

<sup>575</sup> Source: <https://www.leychile.cl/Navegar?idNorma=5595>

<sup>576</sup> Source: <https://www.leychile.cl/Navegar?idNorma=176595>

<sup>577</sup> Boglarka Fedorko and Lukas Berredo, *The vicious circle of violence: trans and gender-diverse people, migration, and sex work*, (TGEU, 2017). <http://transrespect.org/tvt-publication-series>

is a final destination for drug trafficking. Although he knows that trans women are usually detained for this crime, there are no official statistics or civil society reports. He says the police do not care about trans issues and that in one prison, trans persons are held in segregated spaces "for the insane."<sup>578</sup>

Law 20.000 of 2005 sanctions the illicit traffic of drugs, which includes possession. Drug consumption is not considered a crime but carries a fine and requires attending drug prevention programs and community service.<sup>579</sup>

Civil society organisations reported ambiguity because sex work is not criminalised, only trafficking. Nevertheless, sex workers are criminalized when they try to work both indoor and outdoors, and the police use trafficking to enter premises where sex work takes place. Laws regarding "moral and good manners" and laws that are no longer in force are used to prohibit sex work in any space. Also, if the sex workers are caught under any laws, such as drug possession, that is used to exercise identity control.<sup>580</sup>

Institutional violence responds to the ambiguity of the law and is carried out by state agents and local governments in the form of forced detentions, excessive identity control, untimely raids, ill-treatment and physical violence, psychological torture, submission and solitary confinement, illegal detentions, bribery, racial discrimination, sexual violence, unauthorized touching; demands for sex in exchange for freedom; and arresting of sex workers in public spaces.<sup>581</sup>

In October 2019, a wave of protests took place in Chile and a trans activist reported that trans feminine gender expressions were particularly profiled and punished by the police and armed forces, including through sexual violence.<sup>582</sup>

<sup>578</sup> Source: Franco Fuica, Director of Organizando Trans Diversidades (OTD), 2 October 2019.

<sup>579</sup> Chilean Ministry of Interior and Public Security, Ley N° 20.000: <http://www.senda.gob.cl/quienes-somos/normas-vinculadas/ley-no-20-000-sanciona-el-trafico-ilicito-de-estupefacientes-y-sustancias-sicotropicas/>

<sup>580</sup> Red de Trabajadoras Sexuales de Latinoamérica y el Caribe (REDTRASEX): [http://redtrasex.org/IMG/pdf/informe\\_nacional\\_chile.pdf](http://redtrasex.org/IMG/pdf/informe_nacional_chile.pdf)

<sup>581</sup> Ibid.

<sup>582</sup> See OTD source above.



# Colombia

	<b>Name change</b>	Possible.
	Quote/details	<p>Any citizen can modify their given name in the civil registry through a public deed.<sup>583</sup></p> <p>This procedure is allowed just once,<sup>584</sup> but trans people can change their names in their civil registry and identity documents twice.<sup>585</sup></p>
	<b>Gender marker change</b>	Possible, without prohibitive requirements.
	Authority	Decree (trans-specific). <i>Decree 1227/2015</i> . <sup>586</sup>
	Conditions for gender marker change	<p><i>Decree 1227/2015</i> allows the “correction” of the “sex” marker in documents through a public deed. The petitioner must also provide:</p> <ol style="list-style-type: none"> <li>1. A copy of the civil registry;</li> <li>2. A photocopy of the ID document (cédula)<sup>587</sup>;</li> <li>3. An affidavit with the intention of making the change of the marker “sex”.</li> </ol> <p>The component can be renamed only 10 years after the first modification and a maximum of twice in one’s life. The notary must issue a public document within five working days of making the request.<sup>588</sup></p> <p>The Decree did not include children because it required a photocopy of a “cédula”, which is only given to adults when they turn 18 in Colombia.</p> <p>However, in August 2017, the Constitutional Court ruled in a case of an underage trans man who was close to turning 18 years old that he could change his name and correct the sex marker.</p> <p>Even though the Court said that “the specific case will be solved taking into account its particularities and without fixing effects for other similar concrete cases”, the Court established “the most relevant criteria for deciding whether to proceed with this procedure when requested by a minor” and based on prior judgements were:</p> <ol style="list-style-type: none"> <li>1. The will of the parents and the child</li> <li>2. Professional judgment of third parties, such as certifications by doctors, therapists, social workers or other professionals</li> <li>3. The person’s proximity to the majority of age. The manifestation of the will of a person close to the age of 18 is more important and should be attended more carefully, than that of a pre-pubertal or infant.</li> <li>4. The constitutional judge must weigh the importance of the decision to be made, its side effects and the possibilities of reversing it.<sup>589</sup></li> </ol> <p>In 2018, the Superintendent of Notaries and Registry, in compliance with a Constitutional Court’s order, issued Instruction 12 to all notaries in the country that a cédula was not necessary if the requirements listed above were met.</p>

<sup>583</sup> Article 6, Decree No. 999 / 1988 approved by the President of the Republic: [http://www.icbf.gov.co/cargues/avance/docs/decreto\\_0999\\_1988.htm](http://www.icbf.gov.co/cargues/avance/docs/decreto_0999_1988.htm)

<sup>584</sup> ColConectada, “Cambio de nombre en Colombia”, January 6th 2015: <http://www.colconectada.com/cambio-de-nombre-en-colombia/>

<sup>585</sup> Colombian Constitutional Court, Ruling T-086/14: <http://www.corteconstitucional.gov.co/relatoria/2014/T-086-14.htm>.

<sup>586</sup> *Por el cual se adiciona una sección al Decreto 1069 de 2015, Único Reglamentario del Sector Justicia y del Derecho, relacionada con el trámite para corregir el componente sexo en el Registro del Estado Civil.*

<sup>587</sup> A “Cédula” is only given to adults in Colombia when they turn 18.

<sup>588</sup> Decree No. 1227 / 2015 approved by the Ministry of Interior and the Ministry of Justice: <https://www.minjusticia.gov.co/Portals/0/Ministerio/-decreto%20Unico/%23%20decretos/1.%20decreto%202015-1227%20sexo%20c%C3%A9dula.pdf>.

<sup>589</sup> Constitutional Court of Colombia. Judgement T-498/2017, Judge Cristina Pardo Schlesinger, August 3, 2017.



In September of 2019, the Constitutional Court issued a judgement<sup>590</sup> regarding the rights of a 10-year-old trans child<sup>591</sup> who sued, through his mother, a Notary that did not allowed him to change his name and sex to match his gender Identity. The Court concluded that the absence of an expedited administrative mechanism to modify a minor's gender marker, when the minor is not close to the majority age, was a violation of their fundamental rights. The Court waived requirements 1-3 of Instruction 12/2018 and ordered the Superintendent of Notaries and Registry to inform all notaries in Colombia that the requirements of the Instruction must be interpreted taking into account the best interest of the child, and that they:

1. Prohibit physical, medical or psychological tests to demonstrate the appropriate gender identity: Gender identity is only determined by experience and self-determination.
2. Overcome the age threshold:
  - a) The evolving capacities<sup>592</sup> of children and youth must be examined in each specific case. Age is an indicator of evolving capacities, but it is not an objective and exclusive rule. An evaluation of capacities must consider that gender identity is formed between 5 and 7 years old. For ages below 5, substitutive consent may proceed.<sup>593</sup>
  - b) The will of the parent/guardian follows a rule of inverse proportionality: the need for parental consent is reduced when the minors are older.
3. Ensure the decision of the child or adolescent is free, informed and qualified, with no coercion, and is voluntary. The decision is made with prior and sufficient knowledge about the implications of the decision.



## Laws used against transgender and gender diverse people



### Legislation

*Police National and Coexistence Code, Behaviors that affect the tranquility and respectful relationships of people.*



### Quote/details

*Article 33 (2)(b) and (c).*

*The following behaviors affect the tranquility and respectful relationships of people and therefore should not be done:*

*2. In public spaces or open to the public, or that are done in private spaces that transcend to the public space:*

*b) Perform sexual acts or exhibitionism that causes discomfort to the community.*

*c) Consume substances that are alcoholic, psychoactive or prohibited, not authorized for consumption.*

<sup>590</sup> Constitutional Court of Colombia. Judgement T-447/2019, Judge Gloria Stella Ortiz, 17 September 2019: <http://www.corteconstitucional.gov.co/relatoria/2019/t-447-19.htm>

<sup>591</sup> The case discusses "genital ambiguity" and "karyotype: 46XY" which indicates that it also contemplates intersex rights.

<sup>592</sup> "The recognition of the evolving capacities of minors for decision-making and respect for their autonomy has been built on the best interests of the minor provided for in Article 44 and Article 5 of the Convention on Rights of the Child that imposes this criterion as a limit and guide of the decisions of direction and orientation exercised by the parents or guardians of the child. Article 12 *ibid* establishes the right to be heard and considered in matters that affect them according to their age and maturity. The jurisprudential line developed by this Corporation, has recognized autonomy and capacity in the context of decisions regarding sex definition and reassignment, euthanasia, voluntary termination of pregnancy, cosmetic surgeries and modification of the components of Civil Status". Constitutional Court of Colombia. Judgement T-447/2019, Judge Gloria Stella Ortiz, 17 September 2019 (Paragraph 93): <http://www.corteconstitucional.gov.co/relatoria/2019/t-447-19.htm>

<sup>593</sup> "To determine their capacity with respect to this decision, the first relevant element is the jurisprudential rule developed in cases of intersexuality, in which 5 years old is considered the age when children develop their gender identity and, therefore, substitute consent (parents or legal representatives take the decision for the child) for defining the sex is valid and sufficient only when it is given before the 5 year threshold... In relation to this milestone, experts who intervened in this process indicated that although the construction of gender identity is a continuous process that does not have a consolidation threshold, it can be affirmed that at 2 years old human beings are aware of gender identity and that the total understanding of the concept - not the final decision on it - is consolidated between 5 and 7 years." (parenthesis added, not on the original citation). Constitutional Court of Colombia. Judgement T-447/2019, Judge Gloria Stella Ortiz, 17 September 2019 (Paragraph 94): <http://www.corteconstitucional.gov.co/relatoria/2019/t-447-19.htm>

	Legislation	National Police and Coexistence Code, Behaviors against the care and integrity of public space.
	Quote/details	<p>Article 140 (7). The following behaviors are contrary to the care and integrity of the public space and therefore should not be carried out:</p> <p>7. Consume alcoholic beverages, psychoactive substances or banned in stadiums, coliseums, sports centers, parks, hospitals, health centers and in general, public space, except in the activities authorized by the competent authority.</p>
	Legislation	Criminal Code
	Quote/details	<p>Article 376. Anyone who, without permission from the competent authority, enters the country, whether in transit, or take it out, transport, carry, store, conserve, prepare, sell, offer, acquire, finance or supply any drug, psychotropic or synthetic substance in tables one, two three and four of the United Nations Convention on Psychotropic Substances.</p>
	Legislation	Land Management Plans, Decree 190 of 2004 (Bogotá). <sup>594</sup>
	Quote/details	<p>Article 347 (3). The high-impact entertainment and recreation services of metropolitan scale linked to sex work, classified as Wiskerías, Strepttease, houses of lenocinio and similar, must meet the following conditions from the architectural and urban point of view:</p> <p>Paragraph 2. The "normative table" will make the precise delimitation of the subsectors in the areas of activity indicated as Special Zones or High Impact Services [...]<sup>595</sup></p> <p>Decree 1844 of 2018. "To partially regulate the National Police and Coexistence Code, regarding the prohibition of possession, delivering, distribution or market of drugs or prohibited substances."<sup>596</sup></p>
[DE FACTO CRIMINALISATION]		
	Situation	<p>In 2019, the Attorney's General Office reported that 19 LGBTI persons were convicted for damage to another's property (1 person), narcotics (2 persons) extortion (1 person), first-degree murder (6 persons), theft (7 persons) and personal injury (2 persons).<sup>597</sup> The office also registered a total of 442,038 persons convicted of narcotics, first-degree murder, theft and personal injury, of which 14 are LGBTI persons.<sup>598</sup></p> <p>However, the numbers from the Attorney's General Office are widely different to those provided by the National Penitentiary and Prison Institute (INPEC) in 2016.<sup>599</sup> In 2012, out of a total of 815 self-identified LGBTI persons, 102 self-identified as trans. The predominant crime of these LGBTI persons is drug related (38%).<sup>600</sup></p> <p>According to civil society reports in 2017, 35 of 75 reported cases of police violence were made by trans persons (31 trans women, 4 trans men) and 17 were made by sex workers.<sup>601</sup> The majority of cases were motivated by gender and gender stereotyping and included jokes or</p>

<sup>594</sup> Different regions have the autonomy to create their own plan. We only looked at Bogotá, however this is a recurrent practice in several Colombian cities.

<sup>595</sup> See: <http://www.sdp.gov.co/transparencia/marco-legal/normatividad/decreto-190-de-2004>

<sup>596</sup> See: [https://www.mininterior.gov.co/sites/default/files/decreto\\_1844.pdf](https://www.mininterior.gov.co/sites/default/files/decreto_1844.pdf)

<sup>597</sup> Official response from the Attorney General's Office, 24 September 2019. The response did not specify if the numbers reflect 2018 only or is a cumulative number from when "LGBTI" was introduced in statistics in Colombia.

<sup>598</sup> The project Bodies in Prison, Minds in Action (Spanish: *Cuerpos en Prisión, Mentes en Acción*) from the organization Red Comunitaria Trans identified that these were amongst the most common crimes for trans persons in the La Picota prison, hence why we asked the Attorney General's for this information (24 September 2019).

<sup>599</sup> National Penitentiary and Prison Institute (INPEC), "Lesson Learned No. 3: Respect and Protection of the Rights of LGBTI Sectors in the Prison System", July 2016. On 15 June 2012, Regional Directors were requested to carry out a free and autonomous self-recognition count of the LGBTI population in the national prison system (ERON).

<sup>600</sup> Ibid.

<sup>601</sup> Colombia Diversa and Caribe Afirmativo, "La Discriminación, Una Guerra Que No Termina – Informe De Derechos Humanos De Personas Lesbianas, Gays, Bisexuales Y Trans En Colombia Durante el 2017", July 2018: [https://colombiadiversa.org/colombiadiversa2016/wp-content/uploads/2018/07/A-0450\\_OS\\_baja-Informe-DDH.pdf](https://colombiadiversa.org/colombiadiversa2016/wp-content/uploads/2018/07/A-0450_OS_baja-Informe-DDH.pdf).

insults regarding sexual orientation or gender identity. Further, the reports state that the majority of complaints were not investigated properly by, while the institutions responsible did not open formal investigations.<sup>602</sup>

According to trans sex workers and activists from Bogotá, the police often uses laws regarding “exhibitionism” to fine them, and they are often beaten for moving a few blocks outside the “defined space” for sex working. A trans sex worker organisation reports recurring police harassment where there is drug consumption in private spaces,<sup>603</sup> with insults, physical violence and fines. They also report violence during identity controls, where the police ask for identity documents without justification.<sup>604</sup>

Since 1994, drug possession for personal use has been considered a fundamental right.<sup>605</sup> In June 2019, the Constitutional Court decided that Articles 33 and 140 of the *National Police and Coexistence Code* were unconstitutional because they established an irrational and wide prohibition; the measures were unnecessary for the result they aimed to achieve. That is, in cases where consumption does not affect coexistence or the integrity of public spaces.<sup>606</sup>

In 2016, the Constitutional Court ruled in favour of the rights of sex workers and stated that police authorities cannot rely on “public space recovery policies” to discriminate against them.<sup>607</sup> A sex worker organisation said that the implementation of the decision has been weak and ineffective because even though the Court gave orders to different institutions, sex workers were not widely consulted.<sup>608</sup>

<sup>602</sup> Diversas Incorrectas, Fundación Grupo de Acción y Apoyo a Personas Trans, Colombia Diversa, “Informe Sombra para el Comité de la CEDAW - Situación de mujeres lesbianas, bisexuales y trans en Colombia 2013-2018”, 2019: <https://colombiadiversa.org/colombiadiversa2016/wp-content/uploads/2019/02/CEDAW-reporte-esp%C3%B1ol-LBT-Colombia-1.pdf>.

<sup>603</sup> Interview: Yoko Ruiz, Executive Director, Red Comunitaria Trans, 10 October 2019.

<sup>604</sup> Interview: Gina Alexandra Colmenares, young sex worker, Red Comunitaria Trans, 10 October 2019.

<sup>605</sup> Colombian Constitutional Court, Judgement C-221 of 1994, 5 May 1994: <http://www.corteconstitucional.gov.co/RELATORIA/1994/C-221-94.htm>.






<sup>606</sup> Colombian Constitutional Court, Press Release No. 8, 6 June 2019: <http://www.corteconstitucional.gov.co/comunicados/No.%2018%20comunicado%2006%20de%20junio%20de%202019.pdf>.

<sup>607</sup> Constitutional Court of Colombia, Judgement T-594 of 2016.

<sup>608</sup> Interview: Luz Mary Pardo, Executive Director, Las Callejeras.



# Costa Rica

	<b>Name change</b>	Possible, only for adults.
	<i>Legislation</i>	<i>Regulations for the Registration of Civil Status, Decree No. 6-2011 (and its amendments).</i> <sup>609</sup>
	<i>Quote/details</i>	<p>Any adult who wants to change their name because it does not correspond with their self-perceived gender identity can, only once, request by written petition at the Civil Registry.<sup>610</sup> The Civil Registry will prepare an informed consent form that the person signs. Medical or psychological certification, or other requirements that may be unreasonable or pathologizing, will not be required.<sup>611</sup></p> <p>A determination will be issued, and the birth certificate rectified with a marginal annotation noting the change. However, this note is considered as sensitive data and the procedure for changing the name will be confidential.<sup>612</sup></p>
	<b>Gender marker change</b>	Gender markers are no longer used in identity documents (adults).
	<i>Quote/details</i>	<p>Sex markers cannot be changed on birth certificates. Persons under 18 years of age cannot change name or sex/gender marker. Immigrants (adults) can change the gender marker on their identity cards.</p> <p>In May 2016, Costa Rica requested the Inter American Court of Human Rights for an Advisory Opinion regarding the recognition of the American Convention of the name change to correspond gender identity.<sup>613</sup> In November 2017, the Court issued its response<sup>614</sup> stating that name and gender marker change are rights protected by the Convention and that States had to comply with certain minimum requirements.<sup>615</sup></p> <p>As a result, in June 2018 the President signed an Executive Decree<sup>616</sup> and a Presidential Directive<sup>617</sup> requiring all state institutions to modify documents, procedures and records for trans persons who wish to change their name, photograph, or sex/gender marker.<sup>618</sup> The Decree recognises “the right of every person to autonomously define their sexual and gender identity, and that the data contained in the State records, as well as in identity documents, are consistent or correspond to the definition they have of themselves.”<sup>619</sup></p> <p>The rectification is made through already existing procedures. Institutions are then obliged to carry out the necessary without delay or additional requirements.<sup>620</sup> Also, “the procedures and changes, corrections or adjustments in the records, documents and procedures</p>

<sup>609</sup> Published in La Gaceta No. 94 of 17 May 2011.

<sup>610</sup> *Regulations for the Registration of Civil Status*, Article 52.

<sup>611</sup> *Ibid.*, article 53.

<sup>612</sup> *Ibid.*, article 55.

<sup>613</sup> Based on Article 64 of the American Convention: “The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states”: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

<sup>614</sup> Advisory Opinion 24/17 requested by the Republic of Costa Rica, Gender identity, equality and non discrimination to same sex couples, 24 November 2017: [http://www.corteidh.or.cr/docs/opinionones/seriea\\_24\\_esp.pdf](http://www.corteidh.or.cr/docs/opinionones/seriea_24_esp.pdf)

<sup>615</sup> See, Inter-American Court of Human Rights, Non-official brief in English of gender identity, and equality and non-discrimination with regard to same-sex couples, 24 November 2017. Series A No. 24: <http://www.corteidh.or.cr/cf/Jurisprudencia2/overview.cfm?doc=1884&lang=en>

<sup>616</sup> Executive Decree N° 41173-MP: <https://www.mep.go.cr/sites/default/files/ID24-decreto-41173-MP.pdf>

<sup>617</sup> Presidential Directive N° 015-P: [http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=86790&nValor3=112792&strTipM=TC](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=86790&nValor3=112792&strTipM=TC)

<sup>618</sup> President of the Republic of Costa Rica, Instituciones deberán modificar documentos para que sean acordes con la identidad de género, 28 June 2018: <https://presidencia.go.cr/comunicados/2018/06/instituciones-deberan-modificar-documentos-para-que-sean-acordes-con-la-identidad-de-genero/>

<sup>619</sup> Executive Decree N° 41173-MP, Article 3.

<sup>620</sup> Executive Decree N° 41173-MP, Article 5.

will be confidential and the identity documents may not reflect the changes in the sexual identity and gender of the person.”<sup>621</sup>

In October 2018, the Supreme Tribunal of Elections eliminated the sex marker from cédulas (identity documents for adults).

In June 2019, the Constitutional Court heard a case of a trans woman who wanted to change her sex marker on her birth certificate. The court said that what is registered in the birth certificate is the “sex assigned at birth” and not a person’s gender identity:

*(S)ex at birth cannot be modified, since there are justifiable medical reasons that require that information to remain in a registry... sex cannot be modified in the terms intended... because its underlying objective is aimed at registering the gender identity... However, in Costa Rica the gender of a person is not registered.*<sup>622</sup>

The Supreme Tribunal of Elections issued a resolution in May 2018 denying all possibility for name change and sex marker rectification for trans persons under 18 years of age.<sup>623</sup> In March 2019, activists presented a lawsuit against the Tribunal asking for rectification of the sex marker in birth certificates and for name change to be extended to trans persons under 18 years old.<sup>624</sup>

Finally, in April 2019, a trans man from Venezuela was able to change his gender marker in his “Dimex” (identity card for migrants).<sup>625</sup>

<sup>621</sup> Presidential Directive N° 015-P, Article 6.

<sup>622</sup> Constitutional Court of Costa Rica, Resolution No. 2019011201, 21 June 2019: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-923007>.

<sup>623</sup> El Mundo CR, “Trans presentan recurso de amparo contra TSE para rectificar sexo en actas de nacimiento”, 29 March 2019.

<sup>624</sup> Ibid.

<sup>625</sup> El Mundo CR, “Persona trans migrante logra cambio de género en cédula”, 29 April 2019: <https://www.elmundo.cr/costa-rica/persona-trans-migrante-logra-cambio-de-genero-en-cedula/>



## Cuba

	<b>Name change</b>	Possible.
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	<i>Documents amended</i>	Birth certificate
	<i>Conditions for gender marker change</i>	<p>The sex in identity documents can be amended only if it corresponds to the genitalia of the petitioner. This is because “current legislation registers sex depending on genitalia, even if genitalia were reassigned by surgery”.<sup>626</sup> Integral medical care (including sex reassignment surgery and hormonal treatment) is provided and covered by the national health care system since 2008 (<i>Public Health Ministry, Resolution 126</i>).<sup>627</sup></p> <p>The petitioner submits the request to the Civil Section of the Local Tribunal. Then, the request is taken to the National Commission for Integral Attention to Trans Persons along with the medical certification that the petitioner has undergone sex reassignment surgery.</p> <p>Finally, the Local Tribunal where the request was originally submitted orders the amendment of sex and name in identity documents. After this, the Civil Registry issues a new birth certificate.<sup>628</sup></p>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Legislation</i>	<i>Penal Code</i> . <sup>629</sup>
	<i>Legislation</i>	<i>Decree 141 of 1988, Contraventions of the Internal Order</i> . <sup>630</sup>
	<i>Quote/details</i>	[DE FACTO CRIMINALISATION]
	<i>Situation</i>	<p>Local media has reported that the Ministry of Interior carries out police raids to prevent trans persons from being in areas considered “prone to prostitution”. The detainees are taken to the nearest police station and fined. For example, some trans sex workers have reported being fined for possession of local anesthetics used for anal sex, with the reason being that these are psychotropic stimulants.<sup>631</sup> The next day, they are released under threat and ordered not to “dress as women”. Those who continue receive a warning which then leads to being classified under a “danger index for antisocial behaviour”.</p> <p>Receiving this classification, as well as warnings or other minor offences may lead a person to being classified as prone to committing a crime. Under pre-criminal security measures of the Penal Code, the person could then be placed in a designated work or study location for the control and orientation of the subject's behaviour.<sup>632</sup></p>

<sup>626</sup> BBC, “Cambio de sexo ya es una realidad en Cuba”, 23 January 2010: [http://www.bbc.com/mundo/america\\_latina/cuba\\_cambio\\_sex0.shtml](http://www.bbc.com/mundo/america_latina/cuba_cambio_sex0.shtml).

<sup>627</sup> Inter Press Service, “HEALTH-CUBA: Free Sex Change Operations Approved”, 6 June 2008: <http://www.ipsnews.net/2008/06/health-cuba-free-sex-change-operations-approved/>; Washington Blade, “Amid Change, LGBT Cubans face lingering challenges”, 27 May 2015: <http://www.washingtonblade.com/2015/05/27/amid-change-lgbt-cubans-face-lingering-challenges/>.

<sup>628</sup> Juventud Rebelde, “El carné tal como soy”, 12 June 2014: <http://www.juventudrebelde.cu/cuba/2014-06-12/el-carne-tal-como-soy/>.

<sup>629</sup> Penal Code of Cuba: <https://wipolex.wipo.int/en/text/492002>



<sup>630</sup> Decree 141 of 1988, Contraventions of the Internal Order: <http://juriscuba.com/wp-content/uploads/2015/10/Decreto-No.-141.pdf>

<sup>631</sup> Ibid.








<sup>632</sup> Article 80.1 a) and b) of the Criminal Code regulates the placement in a specialised work or study establishment for the control and orientation of the subject's behaviour in a dangerous state: CUBA POSIBLE; ROMERO, Lidia M., Cuerpos abyectos y violencia policial, 28 June 2018: <https://cubaposible.com/cuerpos-abyectos-violencia-policial/>



## Dominica

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.

# Dominican Republic

	<b>Name change</b>	Possible.
	<i>Quote/details</i>	<p>There has been a case of a trans woman who changed her name<sup>633</sup> under the <i>Law No.659 of July 17th 1944 on acts of civil status</i>.<sup>634</sup> She is the first transgender women authorized to change her name in her identity documents in the Dominican Republic.</p> <p>In 2014, President Danilo Medina signed Decree 76-14 authorizing 36 trans persons to change their names.<sup>635</sup></p>
	<b>Gender marker change</b>	Not possible.
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Legislation</i>	<i>Law No. 50 of 1988 on Drugs and Controlled Substances of the Dominican Republic</i> . <sup>636</sup>
	<i>Quote/details</i>	<div style="border: 1px solid #ccc; padding: 5px;"> <p>Article 63. Anyone that possesses controlled drugs for any illicit purpose will be sanctioned with a correctional term of imprisonment of six (6) months to two (2) years and a fine of five hundred (RD \$ 500.00) to two thousand pesos (RD \$ 2,000.00).</p> <p>PARAGRAPH: When the amount of possessed controlled drugs is such that, in the opinion of the court, it is presumed that the purpose was to sell or transfer it, in any capacity, for illegal consumption, the penalty shall be three (3) to ten (10) years' imprisonment, and a fine of ten thousand (RD \$ 10,000.00) to fifty thousand pesos (RD \$ 50,000.00).</p> </div> <p>[DE FACTO CRIMINALISATION]</p>
	<i>Situation</i>	<p>80% of trans sex workers reported being arrested at least once and 36% said they had sexual relationships with the police to avoid being detained.<sup>637</sup> The police constantly rape, beat and humiliate sex workers to exercise social control over their sexuality and gender.<sup>638</sup></p> <p>A human rights defender from the Dominican Republic reports that although trans persons are not directly criminalised, trans sex workers are the principal target of drug laws and police abuse such as arbitrary searches, intimidation, and mistreatment.<sup>639</sup> Another activist reports that drug laws for possession or consumption, and laws regarding "morality" and "good customs" were commonly used by the police against trans persons.<sup>640</sup></p>

<sup>633</sup> Más VIP, "Por decreto Mía Cepeda cambia de nombre", 14 July 2014: <http://www.masvip.com.do/secciones/quien/por-decreto-mia-cepeda-cambia-de-nombre> (retrieved 12/10/2016).

<sup>634</sup> "Ley No.659 del 17 julio de 1944 sobre actos del estado civil en República Dominicana", attached with Cristian King's email, 02/10/2016.

<sup>635</sup> Bureo. Decreto del Poder Ejecutivo autoriza a Mía Cepeda cambiar de nombre, 15 July 2017.

<sup>636</sup> See: [https://mip.gob.do/transparencia/images/docs/base\\_legal/Leyes/Ley%20No.50-88,%20sobre%20Drogas%20y%20Sustancias%20Controladas.pdf](https://mip.gob.do/transparencia/images/docs/base_legal/Leyes/Ley%20No.50-88,%20sobre%20Drogas%20y%20Sustancias%20Controladas.pdf)

<sup>637</sup> Victoria Romero, Dominican Republic, "No Más Injusticia para las personas transgénero", 19 June 2018: <https://www.amnistia.org/ve/blog/2018/06/6662/república-dominicana-no-mas-injusticia-para-las-personas-transgenero>

<sup>638</sup> Amnesty International, Dominican Republic: "Uso habitual de la violación y otras formas de tortura por parte de la policía para castigar a las trabajadoras sexuales", 28 March 2019.

<sup>639</sup> Interview: Mariel Ortega, Human Rights Defender and lawyer, 24 October 2019.

<sup>640</sup> Interview: Rosanna Marzán, Executive Director, Diversidad Dominicana, 20 October 2019.





# Ecuador

	<b>Name change</b>	Possible.
	Quote/details	Anyone over 18 years old can change their own names personally and once, without further requirements. <sup>641</sup>
	<b>Gender marker change</b>	Possible, without surgical/sterilisation requirements.
	Legislation	<i>Ley Orgánica de Gestión de la Identidad y Datos Civiles</i> (not trans-specific), Articles 76 and 94.
	Documents amended	Birth certificate.
	<b>Conditions for gender marker change</b>	<p>Anyone over 18 years old can change the “sex” marker in the personal identity document for a “gender” marker as masculine or feminine.<sup>642</sup> Personal photographs in the identity document can also be amended to show the owner’s gender identity. To change the “sex” marker in the civil registry, they must have a judicial order.<sup>643</sup></p> <p>In other words, every citizen in Ecuador has a “sex” marker, but if a trans person changes it will say “gender” and not “sex” as the rest of the population.</p> <p>Nevertheless, in May 2017 the Constitutional Court of Ecuador, in a case of a trans man who went through sex affirming surgery, ordered the General Directorate of Civil Registry, Identification and Registration to change the birth registration from female to male.</p> <p>The Court urged the National Assembly to regulate the change of “sex” in the identity cards of trans persons and gave it a period of one year to do it.<sup>644</sup></p> <p>However, to date the National Assembly has not comply with the Court’s order of 2017 of reforming the law cited above to allow trans persons to amend their “sex” markers.<sup>645</sup></p> <p>In December 2018, a judge ordered the Civil Registry to amend the name and gender marker of a 9-year-old trans girl. The decision was appealed, and the second instance judge partially revoked it. Nevertheless, the girl retains her amended documents and the case is now before the Constitutional Court awaiting final decision. The girl’s lawyer considers that the Court cannot ignore Advisory Opinion 24 of 2017 requested by Costa Rica to the Inter-American Court of Human Rights.<sup>646</sup></p>
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	<i>Regulation of the urban regeneration area of the city centre, 14-01-04</i>
	Quote/details	<p>Article 13.2. REGARDING THE AREAS OF PUBLIC USE.</p> <p>13.2.2 For the purposes of this Ordinance, areas of public are spaces destined for porches, sidewalks, pedestrian streets, plazas and parks, roads, sanitary, electrical and telephone installations, green and recreational areas.</p> <p>13.2.3 In particular, regardless of the special or individual regulations created and to be created for the best administration and maintenance of some</p>

<sup>641</sup> Ley Orgánica de Gestión de la Identidad y Datos Civiles, approved by the National Assembly on 4 February 2016, Article 78: [http://www.-registrocivil.gob.ec/wp-content/uploads/downloads/2016/03/ley\\_organica\\_rc\\_2016.pdf](http://www.-registrocivil.gob.ec/wp-content/uploads/downloads/2016/03/ley_organica_rc_2016.pdf).

<sup>642</sup> *Organic Law on Management of Identity and Civil Information* [Ley Orgánica de Gestión de la Identidad y Datos Civiles], Article 94.

<sup>643</sup> *Ibid.*, article 76.

<sup>644</sup> Constitutional Court of Ecuador. Judgement No. 133-17-SEP-CC. Case No. 0288-12-EP, 10 May 2017.

<sup>645</sup> Interview with Jorge Fernández, Associate and founder of PAKTA (Twitter: @PaktaEC), 5 October 2019.

<sup>646</sup> *Ibid.*

specific space or installation, the users of the goods previously mentioned may not:

(...)

c) Stand or wander around with clothing that threatens the decorum and good customs in public areas

f) It is prohibited to engage in prostitution activities, as well as the operation of dating houses or similar ones.

#### [DE FACTO CRIMINALISATION]



#### Situation

In May 2019, civil society organizations<sup>647</sup> presented a lawsuit against the government for serious violation of human rights, persecution and crimes against humanity faced by LGBTI persons in Ecuador during the process of decriminalization of homosexuality in 1997. More than 100 persons were arrested before 1997.<sup>648</sup> While the process lasted, dozens of trans persons were victims of torture and cruel and inhuman treatment. The movement is seeking “justice, truth and comprehensive reparations for victims of State repression.”<sup>649</sup>

Since 2002, the Transgender Project has been working with trans sex workers on “paralegal activism on the streets”, using itinerant legal patrols to prevent arbitrary detention, offer preventive legal advice, mediate conflict and offer to intervene in cases of police violence, and discrimination in health settings.<sup>650</sup>

According to civil society, the *Regulation of the Urban Regeneration Area of the City Centre of Guayaquil 2014* is used to profile trans sex workers. When trans persons are in public spaces or engaging in sex work discreetly, paragraph (c) of the Regulation is applied, whereas when sex work is openly engaged in, paragraph (f) is applied. Municipal, metropolitan and national police use Regulations such as these to justify recurrent violence against trans sex workers. They further report that many trans persons are in prison for drug related crimes.<sup>651</sup>

<sup>647</sup> FrontFrente de Transfemeninas y Gays, “Nueva Coccinelle”, the organisation that brought the case against the state for criminalising homosexuality in 1997. ELCOMERCIO.COM, “Nueva Coccinelle’ demanda al Estado ecuatoriano por lesa humanidad,” 17 May 2019: <https://www.elcomercio.com/actualidad/nueva-coccinelle-demanda-fiscalia.html>

<sup>648</sup> Salgado, Judith, “Análisis de la interpretación de inconstitucionalidad de la penalización de la homosexualidad en el Ecuador”, Universidad Andina Simón Bolívar, Sede Ecuador, 2004: <https://www.uasb.edu.ec/documents/62017/1868625/An%C3%A1lisis+de+la+interpretaci%C3%B3n+de+inconstitucionalidad+de+la+penalizaci%C3%B3n+de+la+homosexualidad+en+el+Ecuador+-+Judith+Salgado/27f59b83-cf5e-4857-aedb-2dc83862bdd0>

<sup>649</sup> Ibid.

<sup>650</sup> OPENDEMOCRACY.NET; Bueno-Hansen, Pascha, “Los gais y las personas trans en Ecuador exigen justicia y recuperan la memoria histórica”, 17 June 2019: <https://www.opendemocracy.net/es/gais-travestis-en-ecuador-exigen-justicia-y-recuperan-la-memoria-hist%C3%B3rica/>

<sup>651</sup> Interview: DÍANE RODRÍGUEZ, Director of Asociación Silueta X, 12 October 2018.



# El Salvador

	<b>Name change</b>	Not possible, with exceptions.
	Quote/details	<p>Article 23, <i>Ley del Nombre de la Persona Natural, Decreto No. 450 de 1990 de la Asamblea Legislativa</i> allows for a change of name under certain conditions, which do not include recognizing gender identity. Salvadorian legislation only allows change of a person's name under exceptional circumstances and provided that the new name reflects the same gender as in the original document (for which gender marker changes are not allowed). In 2003, a lawyer who made such an application was given a disciplinary sanction.<sup>652</sup></p> <p>In May 2017, the Supreme Court of El Salvador partially upheld a decision from the State of Virginia, United States, that recognized the name change of a trans woman. The judgement from the United States also recognised the person's gender marker change, but the Supreme Court of El Salvador did not recognise this in El Salvador. This marks a difference in reasoning because, in 2015, a similar case was brought to the Salvadorian Court where a trans person sought to uphold a judgement from the United States that recognized her name and gender marker change, but that Court said it was incompatible with its legal system.<sup>653</sup></p>
	<b>Gender marker change</b>	Not possible, <sup>654</sup> with exceptions.
	Quote/details	<p>In January 2019, the Family Court of Zacatecoluca issued a judgement that allowed a trans woman to change her name and sex marker. The civil society organisation that supported the case reported that this was an isolated decision and not binding on other cases.<sup>655</sup></p> <p>The judgement was not made public, but a press release summarized the court's decision as follows:<sup>656</sup></p> <ol style="list-style-type: none"> <li>1. There is a gap in the Ley del Nombre de la Persona Natural, but the judges are obliged to resolve matters despite darkness, insufficiency or legal vacuums.</li> <li>2. Every State that is democratic, including El Salvador, must respect the personal identity (and therefore the gender identity) of its citizens.</li> <li>3. For a State to not violate human rights due to lack of legislation that harmonizes with constitutional guarantees, legislation must be in force and appropriate to changes and not wait until changes happen, taking individual rights hand in hand with the changes in society.</li> </ol> <p>An activist from El Salvador reported that the cases heard through the courts involved trans persons who have undergone "sex reassignment surgeries", and judges usually request forensic experts to "verify" a person's genital surgery before allowing a change of gender marker in identity documents. Since 2019, court cases initiated by people without surgery are still awaiting decisions.<sup>657</sup></p>

<sup>652</sup> Asociación Salvadoreña de Derechos Humanos - Entre Amigos, International Gay and Lesbian Human Rights Commission, Global Rights, International Human Rights Clinic Harvard Law School, REDLACTRANS, *The Violation of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in El Salvador*, Shadow Report submitted to the United Nations Human Rights Committee, October 2010. <https://www.outrightinternational.org/sites/default/files/439-1.pdf>.





<sup>653</sup> Nodal. "El Salvador: la Corte Suprema reconoce la identidad de género de una persona trans", 10 May 2017.

<sup>654</sup> American University - Washington College of Law, Heartland Alliance, ASPIDH Arcoiris, COMCAVIS TRANS and Generación de Hombres Trans de El Salvador: "Violaciones de derechos humanos de las personas transgénero en El Salvador", Shadow Report submitted to the United Nations Human Rights Committee, February 2015: [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SLV/INT\\_CCPR\\_ICS\\_-\\_SLV\\_19856\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SLV/INT_CCPR_ICS_-_SLV_19856_S.pdf).

<sup>655</sup> Source: Foundation of Studies for the Application of the Law (FESPAD).

<sup>656</sup> FESPAD, "Cambio de nombre a mujer trans: El Salvador y los retos en relación al derecho a la identidad de género", 30 April 2019: <https://www.fespad.org/wp-content/uploads/2019/05/Cambio-de-nombre-a-mujer-trans-FESPAD.pdf>

<sup>657</sup> Interview with Ambar Alfaro, trans activist, 15 October 2019. She reports three similar cases of trans persons who have had reassignment surgeries.

	The Legislative Assembly is currently considering a Gender Identity Bill. <sup>658</sup>	
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Penal Code <sup>659</sup>
	Quote/details	<p>Article 171, <i>Obscene Exhibitions</i>.<sup>660</sup></p> <p><i>A person who exhibits or has exhibited other acts of lewdness or of obscene or indecorous exhibition, in a public place or a place that is exposed to the public or before minors under the age of eighteen years old or before persons with mental disabilities, will be punished with imprisonment of two to four years.</i></p> <p>Article 392, <i>Acts against Good Customs and Public Decorum</i>.</p> <p><i>A penalty of ten to thirty days will be imposed on ...a person who in a public place or who is exposed to the sight of others offends public decency by means of obscene words, gestures, attitudes, signs or songs.</i></p>
	Situation	Crimes against obscene exhibitionism and acts against good custom are in force in El Salvador's Penal Code. <sup>661</sup> However, a trans activist considers that the main issue is the wide scope that judges have to impose higher or lower penalties. They report that trans persons usually receive the highest penalties allowed by the law. <sup>662</sup>

<sup>658</sup> Asamblea Legislativa de la República de El Salvador, "A estudio anteproyecto de Ley de Identidad de Género", 19 May 2019: <https://www.asamblea.gob.sv/node/8874>

<sup>659</sup> Penal Code of El Salvador: [http://www.cnj.gob.sv/images/documentos/pdf/publicaciones/codigopenal\\_tomoi.pdf](http://www.cnj.gob.sv/images/documentos/pdf/publicaciones/codigopenal_tomoi.pdf)



<sup>660</sup> Translations taken from Human Dignity Trust, *Injustice Exposed*.

<sup>661</sup> Ibid.

<sup>662</sup> Interview Ambar Alfaro, trans woman from El Salvador, 15 October 2019.



## Grenada

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.



# Guatemala

	<b>Name change</b>	Possible.
	<i>Quote/details</i>	<p>Any person can submit a request of name change to the Notary of the Civil Registry: Articles 18-20, <i>Ley Reguladora de Asuntos de Jurisdicción Voluntaria</i>, Decree No. 54 /1977 (approved by the National Congress).</p> <p>Once the request is formulated, it is published in the government gazette. Other persons can oppose the request if they are negatively affected by that change. If there is no opposition, the Civil Registry will proceed to amend the birth certificate.</p> <p>If there is opposition, a court will determine if the given name of the petitioner will be changed or not.<sup>663</sup></p> <p>In February 2018, 55 trans persons managed to change photo and name in their identity documents. Nevertheless, the sex marker cannot be changed in identity documents in Guatemala.<sup>664</sup></p>
	<b>Gender marker change</b>	Not possible. <sup>665</sup>
	<i>Quote/details</i>	<p>In December 2017, a Gender Identity Bill was presented to the Congress which would allow trans persons to rectify the sex marker on birth certificates.<sup>666</sup> In January 2018, the Inter-American Court of Human Rights issued an Advisory Opinion to Costa Rica establishing that the American Convention recognises the rights of trans persons to have identity documents that reflected their gender identity. Despite this, and support from more than 30 civil society organisations, the Guatemalan Congress rejected this Bill in August 2018.<sup>667</sup></p>

<sup>663</sup> Artículo 3.1. del "Manual del Procedimiento para la Inscripción de Cambio de Nombre, Identificación de Persona e Identificación de Tercero", Acuerdo de Directorio No. 27-2010 del Registro Nacional de las Personas.

<sup>664</sup> PUBLINEWS.GT; Ramos, Saira, Kimberly, "la primera mujer trans guatemalteca que ejerce su voto", 17 June 2019: <https://www.publineWS.gt/gt/noticias/2019/06/17/kimberly-eguizabal-primera-mujer-trans-que-vota-guatemala.html>



<sup>665</sup> Organización Trans Reinas de la Noche, Heartland Alliance for Human Need and Human Rights, Akahatá: "Situación de los Derechos Humanos de las Personas Travestis, Transgénero y Transexuales en Guatemala", Shadow Report submitted to the United Nations Human Rights Committee, August 2015: [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/GTM/INT\\_CCPR\\_ICSGTM\\_21419\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/GTM/INT_CCPR_ICSGTM_21419_S.pdf).

<sup>666</sup> PUBLINEWS.GT; Ramos, Saira, "Sandra Morán presenta ley de identidad de género para los trans", 1 December 2017: <https://www.publineWS.gt/gt/noticias/2017/12/01/sandra-moran-presenta-iniciativa-identidad-genero-personas-trans.html>

<sup>667</sup> REDLACTRANS; OTRANS, "Basta de Genocidio Trans: Informe 2018 Guatemala", 26 March 2019: [https://issuu.com/redlactrans/docs/informe\\_cedostalc\\_2018\\_-\\_guatemala](https://issuu.com/redlactrans/docs/informe_cedostalc_2018_-_guatemala); FRANCE24.COM, "El Congreso de Guatemala rechaza reconocer derechos de los trans", 29 August 2018: <https://www.france24.com/es/20180829-el-congreso-de-guatemala-rechaza-reconocer-derechos-de-los-trans>



# Haiti

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.



# Honduras

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.
	<i>Quote/details</i>	<p>It is forbidden by law to make any modification of the sex assigned in the original birth certificate.<sup>668</sup></p> <p>There are reports in February 2018 of a draft Gender Identity Law.<sup>669</sup> Although a trans organisation has been working on this since 2013, reports are that it has been “nearly impossible to generate a favorable environment to present the law”.<sup>670</sup> As of August 2019, reports are that it is very likely a Gender Identity Bill would be presented to Congress.<sup>671</sup></p>
	<b>Laws used against transgender and gender diverse people</b>	
	<i>Legislation</i>	<i>Decree 266-2001, Law of Police and Social Coexistence.</i> <sup>672</sup>
	<i>Quote/details</i>	<p><i>Article 99. “provides that police may arrest “vagabonds” – a term encompassing “street people, scoundrels, street prostitutes, drug addicts, drunkards, and gamblers.”</i><sup>673</sup></p> <p><i>Article 142. “gives police the authority to arrest anyone who exhibits behaviour that “goes against modesty, good manners and public morals”. The law does not define these terms, nor does it provide guidance on what violates public morality. Additionally, there is no jurisprudence that provides guidance on how to interpret the law.”</i><sup>674</sup></p> <p>[DE FACTO CRIMINALISATION]</p>
	<i>Situation</i>	<p>Civil society organizations report that the police have discretion to interpret and provisions of the <i>Law of Police and Social Coexistence</i>, which lead to abuse and arbitrary detention, especially of trans persons who engage (or are perceived to engage) in sex work.</p> <p>A study of 35 trans people reported that “nearly every interviewee had suffered harassment or physical violence at the hands of local police, often under the pretext of the <i>Law of Police and Social Coexistence</i>”. Further, since the 2009 Honduran coup d’état there has been the discovery of a clandestine prison used by municipal police to “disappear” individuals, including transgender persons.<sup>675</sup></p>

<sup>668</sup> Artículo 30, Numeral 5 del Reglamento de la Ley del Registro Nacional de las Personas, Acuerdo No. 73 del Directorio del Registro Nacional de las Personas. Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Documents/Reglamento%20de%20la%20Ley%20del%20Registro%20-Nacional-%20de%20las%20Personas.pdf>.

<sup>669</sup> NODALAM, Honduras: preparan un anteproyecto de Ley de Identidad de Género, 20 February 2018: <https://www.nodal.am/2018/02/honduras-preparan-un-anteproyecto-de-ley-de-identidad-de-genero/>

<sup>670</sup> REDLACTRANS; Colectivo Unidad Color Rosa, Basta de Genocidio Trans Informe Honduras 2018, 26 March 2019: [https://issuu.com/redlactrans/docs/informe\\_cedostalc\\_2018\\_-\\_honduras](https://issuu.com/redlactrans/docs/informe_cedostalc_2018_-_honduras)

<sup>671</sup> CRITERIO.HN, Afinan proyecto de ley de identidad de género para las personas trans, 29 August 2019: <https://criterio.hn/afinan-proyecto-de-ley-de-identidad-de-genero-para-las-personas-trans/>

<sup>672</sup> Human Dignity Trust, *Injustice Exposed*.

<sup>673</sup> *Ibid.*




<sup>674</sup> *Ibid.*

<sup>675</sup> *Ibid.*





# Jamaica

	<b>Name change</b>	Possible.
	<i>Quote/details</i>	By deed poll to change driver's license, medical records, passport, etc. The process is governed by policy from the Registrar General's Department. <sup>676</sup>
	<b>Gender marker change</b>	Not possible.

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<sup>676</sup> Source: Glenroy Murray, JFLAG.



# Mexico

	<b>Name change</b>	Possible, only in Federal District of México City. <i>See gender marker change information below.</i>
	<b>Gender marker change</b>	Possible, without prohibitive requirements (only in Federal District of México City).
	<i>Legislation</i>	<i>Civil Code, Article 135</i> (not trans-specific).
	<i>Quote/details</i>	In Mexico, the laws concerning changing name and gender marker are not uniform and depend on the federal states. Only the Federal District of México City has taken measures to recognize gender identity, allowing trans people to change their name and gender on identity documents.
	<i>Conditions for gender marker change</i>	<p>Since 13 March 2004, the amendments to the México City Civil Code allowed transgender people to change their gender marker and name on birth certificates. However, sex reassignment surgery was required.<sup>677</sup> In 2008, this right was extended to recognize gender identity.</p> <p>In November 2014, the legislative assembly approved by vote a proposal so that transgender persons can change their name and gender without medical examination nor judicial order.<sup>678</sup></p> <p>This amendment points the recognition of gender identity as a necessity, unlike the former amendments. In addition, the new article modifies the process from being judicial and up to the judge's discretion to an administrative procedure.</p> <p>The requirements are listed in Article 135 of the <i>Civil Code</i>. The applicant must be Mexican, over 18 years old and provide the following documents: a filled application, proof of residency in the district of México City, birth certificate and official ID.<sup>679</sup></p> <p>An important step forward in this reform is that no longer are chirurgical and medical interventions are required: "In no event shall be required chirurgical interventions of any kind, as well as therapies or other diagnostic and/or procedure (alike) for the recognition of gender identity."</p> <p>In 2017, a 6-year-old trans girl, became the first minor in Mexico to change her name and gender marker in her birth certificate through an administrative process, without having to go through a court, or have certification from a doctor or psychologist to prove her identity.<sup>680</sup></p> <p>In November 2019, the Supreme Court of Justice declared that judicial procedures to recognise legal gender recognition were unconstitutional. The judgment affects all jurisdictions in México. The Court held that such processes should only be administrative because judicial proceedings in this context are an unnecessary invasion into private lives. As of now, only nine states (out of 31) have administrative procedures to legally recognize a person's gender identity. The effect of the ruling is that federal states must take adequate steps to guarantee that trans persons can change their birth certificates through administrative processes without third party consent or any kind of medical proof.</p>

<sup>677</sup> OutRight International, Mexico City amends Civil Code to include transgender rights, 15 June 2004: <https://www.outrightinternational.org/content/mexico-mexico-city-amendscivil-code-include-transgender-rights>

<sup>678</sup> Milenio, "Facilitan cambio de nombre a personas transgénero", 13 November 2014: [http://www.milenio.com/df/transgenero-actas\\_de\\_nacimiento-aprueba\\_ALDF-tramites-juicio-peritajes\\_0\\_408559370.html](http://www.milenio.com/df/transgenero-actas_de_nacimiento-aprueba_ALDF-tramites-juicio-peritajes_0_408559370.html); Animal Político, "Reconocimiento de identidad de género derechos de personas transexuales y transgénero", 20 April 2015: <http://www.animalpolitico.com/blogueros-verdad-justicia-reparacion/2015/04/20/reconocimiento-de-identidad-de-generoderechos-de-personas-transexuales-y-transgenero/>

<sup>679</sup> Código Civil Para el Distrito Federal de México <http://www.aldf.gob.mx/archivo-c9dc6843e50163a0d2628615e069b140.pdf>

<sup>680</sup> Sinembargo.mx, "Sophía, 6 años, se convierte en la primera niña trans mexicana en cambiar nombre y género en acta", 15 October 2017.





## Nicaragua



**Name change**

Not possible.









**Gender marker change**

Not possible.



# Panama

	<b>Name change</b>	Possible.
	<i>Quote/details</i>	Resolution 221 of the National Direction of the Civil Registry, commencing in 2016. <sup>681</sup> Before that, trans persons were required to have had sex reassignment surgery to change their names. <sup>682</sup>
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	<i>Legislation</i>	General Assembly's Law on Civil Registry, Law 31 of 2006, Section 121.
	<i>Documents amended</i>	Birth certificate.
	<i>Conditions for gender marker change</i>	By a ruling of the National Direction of the Civil Registry. <sup>683</sup> A forensic doctor must certificate that the sex of the person is the same as that corrected to in the identity documents. <sup>684</sup> For trans people, this means that they can only request a correction of sex in their identity documents if they go under sex reassignment surgery. <sup>685</sup>

<sup>681</sup> La Estrella de Panamá, "Candy Pamela, primera transexual en cambiar su nombre en Panamá", 22 May 2016: <http://laestrella.com.pa/-panama/nacional/candy-pamela-primera-transexual-cambiar-nombre-panama/2393962>.

<sup>682</sup> Corresponsales Clave, "Avances en el derecho a la identidad de género en Panamá": <http://www.corresponsalesclave.org/id-genero-pan.html>.

<sup>683</sup> Artículo 121 de la Ley del Registro Civil, Ley 31 de 2006 de la Asamblea Nacional: [http://www.tribunal-electoral.gob.pa/html/fileadmin/-user\\_upload/archivos\\_en\\_general/Ley\\_31-2006\\_del\\_Registro\\_Civil.pdf](http://www.tribunal-electoral.gob.pa/html/fileadmin/-user_upload/archivos_en_general/Ley_31-2006_del_Registro_Civil.pdf).

<sup>684</sup> Ibid.

<sup>685</sup> "Situación de derechos humanos de las personas trans en Panamá", Public Hearing before the Inter-American Commission of Human Rights, October 2015: <https://www.youtube.com/watch?v=At3Lp26inKw>.












## Paraguay

	<b>Name change</b>	Possible, though unclear for trans persons.
	<i>Quote/details</i>	<p>Current legislation only allows name change in exceptional cases and with a judicial order. If someone else is affected by this change, they can request the judge to revert it.<sup>686</sup></p> <p>It is unclear if this can be used by trans persons also.</p>
	<b>Gender marker change</b>	Not possible.

<sup>686</sup> Articles 42 and 48, Act No. 1183, Paraguay Civil Code, approved by the National Congress:  
[https://www.oas.org/dil/esp/Codigo\\_Civil\\_Para-guay.pdf](https://www.oas.org/dil/esp/Codigo_Civil_Para-guay.pdf).



# Peru

	<b>Name change</b>	Possible. <sup>687</sup>
	<b>Gender marker change</b>	Possible. <sup>688</sup>
	<b>Authority</b>	Judicial (Summary process). <sup>689</sup>
	<b>Conditions for gender marker change</b>	<p>The judgement that allowed the name change and sex change also determined that should be done through a summary process. Even though the court did not establish a specific set of requirements, it gave a new interpretation:</p> <div style="border: 1px solid #ccc; padding: 10px; margin: 10px 0;"> <p><i>“biological reality [...] should not be the only determining factor for the allocation of sex, since it, as a construction, must be understood within the social, cultural and interpersonal realities that the person himself experiences during his existence. Therefore, sex should not always be determined in terms of genitality, because it would thus be falling into a biological determinism, which would reduce human nature to a mere physical existence, and that would obviate that the human is also a psychic and social being”.</i><sup>690</sup></p> </div> <p>Currently, there are 172 cases before the Judicial Branch (106 for name and sex change, and 66 for name change only). The Public Prosecutor, National Registry of Identification and Civil Status, reported that sex markers and names can only be changed through the courts. While Peru’s Gender Identity Bill is still pending debate before the Congress since 2016, the Public Prosecutor is concerned that the Civil Code does not give guidance to the courts on sex marker change processes, only on name change processes.<sup>691</sup></p>
	<b>Laws used against transgender and gender diverse people</b>	
	<b>Legislation</b>	National Police Law. <sup>692</sup>
	<b>Quote/details</b>	<div style="border: 1px solid #ccc; padding: 10px;"> <p>Article 7, Functions.</p> <p>15. Exercise the identification of persons for police purposes (...)</p> <p>Article 8, Attributions.</p> <p>1. Intervene in all circumstances, when the exercise of the police function requires so (...)</p> <p>2. Require the presentation of personal identity documents when the case warrants (...).</p> </div>
	<b>Legislation</b>	Penal Code (Title IV, Faults Against Good Customs). <sup>693</sup>
	<b>Quote/details</b>	<div style="border: 1px solid #ccc; padding: 10px;"> <p>Article 450, Other faults</p> <p>Will be punished by community service between ten to thirty days who:</p> <p>1. In a public space, makes immoral or improper propositions to a third party.</p> </div>

<sup>687</sup> Constitutional Tribunal of Peru. Expte. No. 06040-2015-PA/TC - San Martin-Rodolfo Enrique Romero Saldarriaga (Ana Romero Saldarriaga), 2016.

<sup>688</sup> Ibid.

<sup>689</sup> Ibid.

<sup>690</sup> Ibid.

<sup>691</sup> WAYKA.PE, Reniec: 172 demandas para cambiar de género y nombre en DNI a nivel nacional, 22 May 2019: <https://wayka.pe/reniec-172-demandas-para-cambiar-de-genero-y-nombre-en-dni-a-nivel-nacional/>

<sup>692</sup> Supreme Decree No. 026-2017-IN, Regulation of Legislative Decree No. 1267, 15 October 2017: <http://www.gacetajuridica.com.pe/boletin-nvnet/ar-web/DS0262017IN.pdf>

<sup>693</sup> Penal Code of Peru: [http://spij.minjus.gob.pe/content/publicaciones\\_oficiales/img/CODIGOPENAL.pdf](http://spij.minjus.gob.pe/content/publicaciones_oficiales/img/CODIGOPENAL.pdf)

2. In a public facility or a place open to the public, supplies alcoholic beverages or tobacco to a minor.

3. In a public facility or a place open to the public, offers, sells or drinks alcoholic beverages on days or hours when it is forbidden, except in the event of a different legal provision, shall be sentenced to ten to thirty days of community service.

[DE FACTO CRIMINALISATION]



Situation

The Inter-American Commission on Human Rights brought the case of Azul Rojas Marín and her mother before the Inter-American Court of Human Rights. On 25 February 2008, Marín<sup>694</sup> was allegedly deprived of her liberty in an illegal, arbitrary and discriminatory way, for purposes of identification.<sup>695</sup>

The Commission took into account alleged acts of “physical and psychological violence, including various forms of violence and rape against Azul Rojas Marín” and “considered that what happened to the victim should be understood as violence based on prejudice and that the constituent elements of torture are also present.” It made some recommendations to Peru and said that “although the State reported on some measures to comply with the recommendations on measures of non-repetition and on the reopening of the criminal investigation, it did not present any proposal for comprehensive reparation... despite the gravity of the sexual torture of which she was a victim.”<sup>696</sup> This is the first case of violence against LGBT persons submitted to the Court.

In March 2020, the Inter-American Court of Human Rights found that the detention was illegal, under Article 7 of the American Convention, as it did not follow the legal requirements for detention for identification purposes.

The Court determined that the detention was carried out discriminatorily because there was no reason for an identity check, and elements in the case pointed towards discriminatory treatment based on sexual orientation and gender expression. Also, Ms. Rojas was never notified of the reason for her detention. The Court considered it a “manifestly arbitrary arrest” and consequently, declared the international responsibility of Peru for violation of the rights to personal liberty, personal integrity, privacy, not to be subjected to torture, to judicial guarantees and judicial protection.<sup>697</sup>

Further, civil society reports that the police remove sex workers from the streets, for the purpose of “eradicating prostitution as immoral acts.”<sup>698</sup> This same reasoning has been used to justify police operations against trans women who are victims of sex trafficking.<sup>699</sup> In the meantime, from 2010 to 2017 the police rescued 2,781 trafficking victims, none of whom were trans.<sup>700</sup>

<sup>694</sup> A trans woman who at the time identified as a gay man.

<sup>695</sup> “The Commission determined that although the possibility of retention for identification purposes was provided for in Peruvian law in certain circumstances, this standard imposed a number of formal and substantive requirements that were not met in the case...Likewise, the IACHR considered that from the moment Azul Rojas Marín was intercepted by state officials, they not only exercised physical violence against her, but also verbally attacked her with repeated references to her sexual orientation through denigrating expressions”. At the time of the facts, the procedural penal code included an article about identity control (Article 250). IACHR, IACHR Takes Case Involving Peru to the Inter-American Court of Human Rights, 27 August 2018: [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/189.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/189.asp)

<sup>696</sup> “In the Report on the Merits, the Commission recommended that Peru provide full reparation to Marín and her mother for the human rights violations against them. This reparation should include measures of pecuniary compensation and satisfaction to compensate for both material and moral damage, as well as a public act of recognition of responsibility by the State for the victims”.

<sup>697</sup> Inter-American Court of Human Rights, Case Rojas Marín and Another Vs. Perú (Official Summary), Judgement of 12 March 2020: [https://www.corteidh.or.cr/docs/casos/articulos/resumen\\_402\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/resumen_402_ing.pdf)

<sup>698</sup> PLAPERTS PERU, Gran marcha “Ni una menos” en Perú, 15 August 2016: <https://plaperts.nswp.org/node/40>





<sup>699</sup> OJO PÚBLICO; CONNECTAS; Salazar, Elizabeth, Mujeres Trans: Las Víctimas Invisibles de la Trata, September 2018: <https://www.connectas.org/especiales/mujeres-trans-victimas-invisibles-de-la-trata/>

<sup>700</sup> Ibid.





## Saint Lucia

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



# Uruguay

	<b>Name change</b>	Possible. See gender marker change procedure below.
	<b>Gender marker change</b>	Possible, without prohibitive requirements.
	<b>Legislation</b>	<i>Integral Trans Law (Law No. 19684 of 2018).</i> <sup>701</sup> <i>Decree No. 104 of 2019 (Regulates the Integral Trans Law).</i> <sup>702</sup>
	<b>Quote/details</b>	The Law includes “the right to free development of the personality according to gender identity, regardless of their biological, genetic, anatomic, morphologic, hormonal or assigned (or other) sex.” <sup>703</sup>  In July 2019, the United Nations in Uruguay expressed concern about a pre-referendum initiative to repeal the Law. Nevertheless, the pre-referendum did not reach the necessary 25% of the total electoral needed to become a referendum because only 9.9% of those able to vote supported the initiative. <sup>704</sup>
	<b>Conditions for gender marker change</b>	An application to the Honorary Advisory Committee on Identity and Gender Change, which is made up of three persons with proven expertise in sexual and gender diversity. One person should also be an expert from the Civil Registry. The Committee sets a day and time for an interview, either in person or by video conference. According to one trans activist, the interview is an “informative” meeting where the Committee explains the significance of the decision to the petitioner and also to find out if the person wants a name or sex marker change, or both. <sup>705</sup>  After the interview, the Committee verifies legal and regulatory requirements and then prepares a report for the General Direction of the Civil Registry that has to come to a decision within 30 working days. If the petition is accepted, a Resolution will be issued and communicated to the competent entities to make the corresponding changes. If the petition is denied, the Resolution is communicated to the petitioner. <sup>706</sup>  Persons under 18 years of age should have the endorsement of at least one parent or legal representative for the process to remain administrative. If they do not have this endorsement, the process will become judicial and a court decide whether to approve or deny the name and sex marker change. <sup>707</sup>
	<b>Laws used against transgender and gender diverse people</b>	
	<b>Legislation</b>	<i>Sex Work Law No. 17.515 (Chapter IV, Zones, Places and Behaviours).</i> <sup>708</sup>
	<b>Quote/details</b>	<div style="border: 1px solid gray; padding: 5px;"><i>Article 18. The offer of sex work will be authorized in specially determined areas... or the like that have obtained the corresponding authorization.</i></div> [DE FACTO CRIMINALISATION]

<sup>701</sup> See: [https://www.impo.com.uy/bases/leyes/19684-2018#targetText=\(Objeto%20y%20alcance\).%2D,%2C%20protecci%C3%B3n%2C%20promoci%C3%B3n%20y%20reparaci%C3%B3n](https://www.impo.com.uy/bases/leyes/19684-2018#targetText=(Objeto%20y%20alcance).%2D,%2C%20protecci%C3%B3n%2C%20promoci%C3%B3n%20y%20reparaci%C3%B3n)

<sup>702</sup> See: <https://www.impo.com.uy/bases/decretos/104-2019>

<sup>703</sup> Article 1, *Integral Trans Law (Law No. 19684 of 2018)*.

<sup>704</sup> [ladiaria.com.uy](https://ladiaria.com.uy), No alcanzaron los votos para someter a referéndum la ley integral trans, 5 August 2019: <https://ladiaria.com.uy/articulo/2019/8/no-alcanzaron-los-votos-para-someter-a-referendum-la-ley-integral-trans/>

<sup>705</sup> Source: Collette Spinetti, National Director, Colectivo Trans Uruguay.

<sup>706</sup> Article 4, *Decree No. 104 of 2019*.

<sup>707</sup> Article 21, *Integral Trans Law (Law No. 19684 of 2018)*.

<sup>708</sup> Sex Work Law, July 2002: <https://www.impo.com.uy/bases/leyes/17515-2002>



### Situation

Although it is not common for police to displace trans women in bigger cities, this possibly takes place in smaller cities.<sup>709</sup> Sex work activists report that since the law is written from the perspective of the clients and owners of places where sex work is authorised to take place, it only therefore refers to the Ministry of Public Health and Interior and does not include private spaces or the internet. They report that every sex worker has a Ministry of Interior file, exposing the criminals.<sup>710</sup>

#### *Reparation to trans persons*

Significantly, the *Integral Trans Law* establishes a reparatory regime for trans persons “born before 31 December 1975, who certify in a reliable way that for reasons related to their gender identity, they were victims of institutional violence or deprived of their liberty, having suffered moral or physical damage, as well as impeding the full exercise of the rights of free movement, access to work and study, due to discriminatory practices committed by agents of the State or those who, without being so, had their authorisation, support or acquiescence.”<sup>711</sup>

<sup>709</sup> Source: Collette Spinetti, National Director, Colectivo Trans Uruguay.

<sup>710</sup> latetera.com.ar, Trabajo sexual y regulación: la experiencia uruguaya, January 25, 2019: <https://latetera.com.ar/2019/01/25/trabajo-sexual-y-regulacion-la-experiencia-uruguaya/>

<sup>711</sup> Article 10, *Integral Trans Law* (Law No. 19684 of 2018).



# Venezuela

	<b>Name change</b>	Possible.
	Quote/details	<p>The <i>Organic Act of the Civil Registry</i> states that any adult citizen can modify the given name once. The request must be submitted with a copy of the Civil Registry to be amended, a letter explaining the reasons why the petitioner wants to change her or his name, the address and the signature of the petitioner.</p> <p>Among the valid reasons to change the given name, are whether it is “injurious” or whether it corresponds with the gender of the petitioner.<sup>712</sup> The Civil Registry must issue a final decision in a term of 8 days. If the request is denied, the petitioner can ask for a motion of reconsideration to the Civil Registry or can submit the request to a judge.<sup>713</sup></p> <p>However, Venezuelan LGBTI activists and organizations have said that most name change requests by trans persons are denied by the Civil Registry and redirected to administrative judges. In such cases, “most of the requests are denied after a prolonged time and invidious medical, psychological, psychiatric or forensic examinations”.<sup>714</sup></p>
	<b>Gender marker change</b>	Not possible.
	Quote/details	<p>In June 2017, Venezuela’s Tribunal recognized the right of persons to change their identity and sex, following medical, psychiatric and psychological examinations.</p> <p>The Constitutional Chamber “admitted an unnamed action of a constitutional nature interposed by several citizens with which, invoking the right to the free development of the personality ... they seek to be recognized their rights to change names and gender”. Each case will be analysed individually.<sup>715</sup></p>
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	<i>Penal Code (Book 3, Zones, General Faults)</i> . <sup>716</sup>
	Quote/details	<div data-bbox="616 1339 1267 1491" style="border: 1px solid #ccc; padding: 5px;"> <p>Chapter 3, Acts Against Public Decency, Article 538.</p> <p>Anyone who presents in public in an indecent manner, or who with words, songs, gestures, signs or other improper acts, offends public decency, will be punished with arrest up to a month or fine of ten to three hundred bolívares.<sup>717</sup></p> </div> <p>[DE FACTO CRIMINALISATION]</p>
	Situation	Congress trans woman Támara Adrián explained that when the police want to profile citizens they use Articles in Book 3 of the Penal Code to legitimise their actions or even enact institutional violence. <sup>718</sup>

<sup>712</sup> Article 146, “Ley Orgánica del Registro Civil” passed by the National Assembly on 25 August 2009: [http://www.cne.gob.ve/registrocivil/up-load/RepoDocs/67ec2b3348cc47937ce81e62a2acbfd0615e6514\\_1293028789.pdf](http://www.cne.gob.ve/registrocivil/up-load/RepoDocs/67ec2b3348cc47937ce81e62a2acbfd0615e6514_1293028789.pdf).

<sup>713</sup> Article 92, Resolution No. 40.093 / 2013 “Reglamento No. 1 de la Ley Orgánica del Registro Civil” passed by the National Electoral Council on December 20th 2012: <https://derechovenezolano.files.wordpress.com/2013/02/reglamento-nc2b0-1-consejo-nacional-electoral.pdf>.

<sup>714</sup> Red LGBTI Venezuela, *Situación de los Derechos Humanos de las Lesbianas, Gays, Bisexuales, Trans e Intersex en Venezuela*, Shadow Report submitted to the United Nations Human Rights Committee, May 2015: [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents-ven/int\\_ccpr\\_css\\_ven\\_20596\\_s.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents-ven/int_ccpr_css_ven_20596_s.pdf).

<sup>715</sup> Agence France Press. Tribunal de Venezuela admite cambio de sexo e identidad con exámenes médicos previos, 10 June 2017

<sup>716</sup> See: [https://www.oas.org/juridico/spanish/mesicic3\\_ven\\_anexo6.pdf](https://www.oas.org/juridico/spanish/mesicic3_ven_anexo6.pdf)

<sup>717</sup> This Book includes other crimes that could have some relation to the criminalisation of trans persons, such as begging and the use of alcohol or drugs.

<sup>718</sup> Source: Tamara Adrián, 31 October 2019.

## Kingdom of the Netherlands

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

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



## Puerto Rico

	<b>Name change</b>	Possible.
	<i>Quote/details</i>	Applicants must submit a petition to the Court of First Instance in the region where they live. The petition must include the applicant's current legal name/given name, the proposed name, their address of residence, place of birth, and original and copies of documents demonstrating the identification of the petitioner, including birth certificate. No public announcement is required. The amendment of the given name in the birth certificate will be effective with the court order and done by the Vital Statistics Registry. <sup>719</sup>
	<b>Gender marker change</b>	Possible, without surgical/sterilisation requirements.
	<i>Authority</i>	Policy.
	<i>Documents amended</i>	Identity card, driver's license.
	<i>Conditions for gender marker change</i>	Since August 2015, it has been possible to change one's driver's license or identity card. The applicant must fulfil a gender change form and submit it to the Department of Transportation and Public Works. It must be signed by a licensed clinical professional (psychologist, therapist or social worker).

## Overseas Departments and Territories of France

**Saint Martin, Martinique, Saint Barthélemy, and Guadeloupe** are overseas departments and territories of France, also called DOM-TOM.<sup>720</sup> It is possible to ask for gender or name change before the *Tribunal de Grande Instance* (a court of the person's region). It is a judicial process and the judge decides whether to grant or refuse the change.

## Overseas Territories of the United Kingdom

**Anguilla, British Virgin Islands, Cayman Islands, Montserrat, and the Turks and Caicos Islands** are overseas territories of the United Kingdom. They are not part of the United Kingdom, they have their own governments and British law does not apply to them. Most of these islands do not have any laws concerning

<sup>719</sup> National Center for Transgender Equality, ID Documents Center-Puerto Rico, 5 June 2017. <http://www.transequality.org/documents/puerto-rico>.

<sup>720</sup> Décret n° 2000-318 du 7 avril 2000 relatif à la partie Réglementaire du code général des collectivités territoriales: <https://www.legi-france.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000399814&dateTexte=&categorieLien=i>.

name or gender changes. Only a few of them have local LGBT organizations, therefore there is a lack of information about LGBT rights.



## *United States Virgin Islands*



**Name change**

Possible.<sup>721</sup>



**Gender marker change**

Possible.<sup>722</sup>

<sup>721</sup> See: <http://transrespect.org/map/pathologization-requirement>

<sup>722</sup> Ibid.

# North America

by Florence Ashley<sup>723</sup> and Sasha Buchert<sup>724</sup>

## *Canada – Florence Ashley*

When I wrote the Canadian introduction to the last edition of this report three years ago, the atmosphere was abuzz in the wake of important legal changes. Between 2014 and 2017, provinces and territories across the country removed surgical requirements for legal gender marker changes. Barely a few months before the report came out, the federal government announced that it would allow a third gender option on passports and a few provinces were beginning to turn their attention to the recognition of genders outside the binary. It was an exciting time.

In the last three years, the dominant trend has been towards the recognition of non-binary identities. Of thirteen provinces and territories, ten or so now offer more than male or female options on at least some identification documents. Some of these options are offered for birth certificates whereas others are restricted to health cards and drivers' licences. Where governments dare stray beyond 'M' and 'F', a nondescript 'X' exhausts the options available to non-binary people.

If the pace of legal change from 2014 to 2017 is best described as hectic, the last few years represented a return to stability. The Montréal Trans Legal Clinic<sup>725</sup> wound down its services amidst a declining need for support with name and gender marker change after important changes to Québec law in 2015 and 2016 removed surgical requirements and allowed minors to change their name and gender markers. A new normal – wherein names and gender markers are easier to change – has been reached, and activism on these fronts has markedly waned.

While waning fervour speaks in part to how far we have come, it may also betray an understanding of accessibility that fails the most disadvantaged members of trans communities. Many provinces still ask for a letter by a healthcare professional confirming that the change is appropriate, driving up the costs of an administrative procedure that is already financially burdensome to a substantial portion of our communities. Youth with unsupportive parents face significant hurdles to changing their documents. Non-citizens are still unable to change their legal name or gender marker in Québec, although we are awaiting a judgment on this issue any day now.

Law reform activism may grow rarer in coming years. Canada, like Australia, New Zealand, and the United Kingdom, is in the throes of a new wave of anti-trans activism. In this context, defending acquired rights is an appealing strategy. Fewer resources are left for advocating legal change. Yet, we must not forget that recent changes have not benefited all equally and that defending these gains comes at a cost for those who are still awaiting legal equality: immigration detention and provincial incarceration are still often based on genitalia, many transition-related services are not covered by public insurance, and poverty and lack of citizenship continue to be significant barriers to name and gender marker changes in some provinces.

## *United States of America – Sasha Buchert*

This continues to be a difficult time for transgender and non-binary people living in the United States. The current administration has worked relentlessly to roll back protections in education,

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<sup>725</sup> Florence was successively summer intern, volunteer, co-director, and chair of the advisory board of the Montréal Trans Legal Clinic from 2016 to 2019.

employment, health care and public accommodations on the federal level. As we have demonstrated throughout our history, however, we are a resilient community and we will continue to resist gender oppression in all of its forms.

Thanks to the work of tireless advocates across the country, one positive trend we have seen in the U.S. in the last three years are policy advances at the state level to remove barriers to identity documents and ensure full legal recognition. There has been a dramatic increase in the number of states providing a third gender option on state-issued identification, and policies allowing for individuals to self-attest their gender – rather than requiring them to submit medical certifications. There are now 17 states and the District of Columbia that provide for a third gender marker on driver’s licenses, and 18 states and the District of Columbia that now allow people to self-attest their gender.

The vast majority of states in the U.S. now allow people to update their gender on state issued identity documents (drivers licenses and state-issued identity cards) without having to show proof of a surgical procedure. Many of the states that do still require some kind of medical certification require that transgender and gender non-conforming (TGNC) people provide documentation from a licensed professional stating that an individual has obtained “appropriate clinical treatment” (not surgery).

The situation is more difficult for people seeking to amend their birth certificate. Only 22 states allow people to amend the gender marker on their birth certificate without showing proof of sex reassignment surgery. 17 states explicitly require surgery to amend the gender on a birth certificate. Two states (Ohio and Tennessee) prohibit gender marker changes on birth certificates altogether and the rest of the states have unclear requirements—both policies are currently being challenged in litigation. Although birth certificates are used less often in everyday life than state issued identity documents in the U.S., they are required for instances such as registering for school or seeking to obtain a marriage license.

While every state allows TGNC people to change their name, there have been ongoing efforts to remove the requirement that they must make a public announcement for their name change (only 16 states permit a name change without requiring a public announcement). On the federal level (e.g., passports), the standard has not changed since 2011, and people seeking to amend their gender marker must submit a physician’s affidavit saying they have undergone “appropriate clinical treatment.” While this standard is vague, it does not require that an individual provide proof of surgery.

The litigation and policy advocacy work being done to remove barriers to identity documents in the U.S. varies from state to state because the political climate varies significantly from state to state. In more conservative parts of the country, the work is centered around removing surgery requirements. One other trend is work focused on advancing criminal justice reform policies to reduce barriers for incarcerated people who are seeking access to identity documents. For example, California and Delaware recently passed laws easing the process for TGNC people in prison seeking to change their name and/or gender marker on their identity documents.






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

Although there has been progress towards the full legal recognition of trans and non-binary people in the last couple of years, there still remains much work to be done—especially in parts of the country where trans and non-binary have the fewest protections. We have much to learn from those countries that have advanced progressive policies. We look forward to further collaboration so that TGNC people everywhere can live free from harassment and discrimination.





# Canada

	<b>Name change</b>	Possible.
	<b>Quote/details</b>	<p>In Alberta, the name on a birth certificate can be changed under the <i>Vital Statistics Information Regulation</i>, part 3, section 16:</p> <div style="border: 1px solid #ccc; padding: 5px; margin: 10px 0;"> <p><i>“(a) currently used name, (b) date and place of birth, (c) sex, (d) proof of identity that meets the requirements of section 15 of the Vital Statistics Ministerial Regulation, (e) current address and mailing address, (f) telephone number, and (g) signature.” As well as “(i) proof of marital status of the person that meets the requirements of section 17 of the Vital Statistics Ministerial Regulation, (ii) a record of the person’s fingerprints taken by a law enforcement agency in accordance with section 24(2)(j) of the Act, (iii) certificates that show all previous changes of name of the person, (iv) the name being applied for, and (v) the person’s full legal name and any other name by which the person is known”.</i></p> </div> <p>There are other requirements if the applicant is not applying in person or if the applicant is minor.</p> <p>In British Columbia, Manitoba and Nova Scotia, the procedures to change the “sex designation” and name on birth certificates and driver’s license are very similar. The last to remove sex reassignment surgery from its <i>Vital Statistics Act</i> was the province of Saskatchewan in February 2016.<sup>726</sup></p> <p>To obtain a name change in Québec, the person has to prove Canadian citizenship and have a residency of at least twelve months of Quebec. On the face of it, Quebec has a “five-year rule” for trans (and non-trans) persons who are required to prove that they have been using their name widely for at least five years. Proof can include “letters from an employer, school, community worker, doctor, family member, or friend... bills, receipts, ID, membership cards, or a lease in the person’s chosen name. Proof of at least two documents per year over five years.”<sup>726</sup></p> <p>Nevertheless, for those who only want a change of name (for example, non-binary people), it is possible to do so with a letter explaining the reasons, including gender identity reasons, or more rarely with a letter from a professional, bypassing the “five-year rule”. The proceeding does not require publication, although this is not usually waived unless explicitly asked for.<sup>727</sup></p>
	<b>Gender marker change</b>	Possible, without prohibitive requirements.
	<b>Authority</b>	Legislation (not trans-specific) and varies in different provinces.
	<b>Conditions for gender marker change</b>	<p>The requirements for sex reassignment surgeries have been removed from all of the provinces. The first one was Ontario, in April 2012, when the Human Rights Tribunal of Ontario ruled that sex reassignment surgery was no longer required to change gender on a birth certificate.<sup>728</sup></p> <p>In Alberta, the <i>Vital Statistics Information Regulation</i> has been modified in 2014 because it was considered unconstitutional.<sup>729</sup> The amended regulation came into force in September 2015 and it does not require surgical reassignment anymore in order to change gender on the birth certificate.</p> <p>Instead, the applicant must provide an affidavit including a “statement confirming that the person identifies with and is maintaining the gender identity that corresponds with the requested amendment to the sex on</p>

<sup>726</sup> Réseau Santé Trans du Québec Health Network, Name & Sex Designation Changes in Quebec. <http://santetranshealth.org/jemengage/en/guide-contents/name-sex-designation-changes-in-quebec>

<sup>727</sup> Observations made by activist Florence Ashley.

<sup>728</sup> The Star, “Transgender Ontarians can now change birth certificates without sex-change surgery”, 12 October 2012: <http://www.the-star.com/news/canada/article/1269454--transgendered-ontarians-now-allowed-to-alter-birth-certificates-without-sex-change-surgery>.

<sup>729</sup> See: <http://www.canlii.org/en/ab/abqb/doc/2014/2014abqb237/2014abqb237.html>.

the record of birth”, as stated in part 3 section 16 of the *Vital Statistics Information Regulation*.<sup>730</sup>

The application must also include a statement confirming the above, written by “one of the following medical professionals:

- (a) a regulated member of the College of Physicians and Surgeons of Alberta under the Health Professions Act who holds a practice permit issued under that Act;
- (b) a regulated member of the College of Alberta Psychologists under the Health Professions Act who holds a practice permit issued under that Act;
- (c) a person who is practising and who is authorized in a jurisdiction other than Alberta to practise a health profession equivalent to that practised by a person referred to in clause (a) or (b).”

In addition, minors can also amend their gender on the birth certificate, upon the consent of the minor’s parent’s or if the minor is married, or an adult independent partner or in charge of another minor. This applies only in Alberta. The gender marker change can also be amended on a subsisting marriage record.

Requirements for sex designation change is as follows in Québec: Canadian citizenship, residing in Québec for at least one year, providing a duly filled application and a “letter from a physician, psychologist, psychiatrist, sexologist or social worker authorized to practice in Canada or in the State in which you are domiciled, who declares having evaluated or followed you and who is of the opinion that the change of sex designation is appropriate” (ref. 5). In practice, letters are only a requirement for children. Adults can rely on the oath of a witness who has known the person for at least a year.<sup>731</sup>

Canada allows “X” markers on passports.<sup>732</sup> In recent years, the trend has been towards “X” or even no gender markers in the provinces and territories, who have jurisdiction over other documents such as birth certificates, driver’s licences and health cards.

Since 2018, Newfoundland and Labrador allow ‘X’ markers on birth certificates for people 16 years and older.<sup>733</sup> Other provinces and territories that also offer “X” as an option on birth certificates are Nova Scotia, Ontario, Alberta, Yukon, British Columbia (also on driver’s licence) and the Northwest Territories. Following a November 2019 court ruling, Manitoba will soon also allow an “X” marker on birth certificates.

Furthermore, Saskatchewan and Ontario have the option to not display the sex field on birth certificates. Although Saskatchewan does not offer “X” markers on birth certificates,<sup>734</sup> the option to remove a gender marker altogether is available for those under 18 years of age.<sup>735</sup> Prince Edward Island has the options of “X” or to leave blank the gender marker in driver’s licences.<sup>736</sup>

In Québec for now, only “Male” or “Female” gender markers are allowed, and name and gender marker change are only available to Canadian citizens.<sup>737</sup> However, both these issues are the subject of a reserved court decision.<sup>738</sup>

<sup>730</sup> *Vital Statistics Information Regulation*, part 3, section 16: [https://www.qp.alberta.ca/documents/Regs/2018\\_108.pdf](https://www.qp.alberta.ca/documents/Regs/2018_108.pdf)

<sup>731</sup> Observations made by activist Florence Ashley from Canada.

<sup>732</sup> Government of Canada: <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/gender-x-documents.html>

<sup>733</sup> CBC News, “X marks the spot: Gemma Hickey breaks new ground with gender-neutral birth certificate”, 14 December 2017: <https://www.cbc.ca/news/canada/newfoundland-labrador/gemma-hickey-secures-gender-neutral-birth-certificate-1.4448562>

<sup>734</sup> Saskatchewan Human Rights Commission: <https://saskatchewanhumanrights.ca/saskatchewan-court-allows-removal-of-gender-from-birth-certificates/>

<sup>735</sup> The Globe and Mail, “The Canadian Press: Saskatchewan to allow people to remove gender designation from birth certificates”, 25 May 2018: <https://www.theglobeandmail.com/canada/article-saskatchewan-to-allow-people-to-remove-gender-designation-from-birth-2/>

<sup>736</sup> CTV News, “The Canadian Press: P.E.I. becomes first province to offer blank space for gender on driver’s licences”, 30 November 2018: <https://www.ctvnews.ca/canada/p-e-i-becomes-first-province-to-offer-blank-space-for-gender-on-drivers-licences-1.4199700>

<sup>737</sup> Directeur de l’état civil, Québec: <http://www.etatcivil.gouv.qc.ca/en/change-sexe.html>

<sup>738</sup> Source: Florence Ashley.



# United States of America

	<b>Name change</b>	Possible.
	Quote/details	<p>Alabama, Alaska, Arizona, American Samoa, Arkansas, California, Colorado, Commonwealth of the Northern Mariana Islands, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, US Virgin Islands, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming an applicant must submit a petition to a court.</p> <p>In Hawaii, “name changes in the State of Hawaii are administered by the Lieutenant Governor and applicants have to use a specific system”<sup>739</sup>.</p> <p>In California, from September 2017, “state inmates can apply for legal name changes without prior approval by correction officials”<sup>740</sup>.</p>
	<b>Gender marker change</b>	Possible, with some medical requirements to prohibitive requirements (varies within the country).
	Quote/details	<p>In California, “starting January 2018, the California Department of Public Health will issue a new birth certificate reflecting a gender of female, male, or nonbinary upon receipt of an application to change the gender along with an affidavit attesting that the change of gender is to conform with the person's gender identity. No provider attestation is required. The agency creates a new birth certificate and seals the old record. If requesting an amended name on the birth certificate as well, applicant must also submit the legal name change order”<sup>741</sup>.</p> <p>Lawyer Sasha Buchert explains that “the new law applies to state issued identity documents, birth certificates and court orders. For all of those items now, people can self-attest and receive a non-binary marker (“X”) on their court order, birth certificate or state issued ID”<sup>742</sup>.</p>
	Authority	<p>Legislation, court application and/or policy, varies in different states.</p> <p>The conditions to change gender marker on identity documents vary among the state laws and policies, and depending on the documents to be amended.</p> <p>The three principal ones are the birth certificate, the driving license and the passport. To give an overview of the variable processes US citizens may encounter when they request to change their name and/or gender marker, we will present the different legal possibilities and their processes depending on each document.</p> <p>The processes by which an individual can change the gender marker on their driver's license and/or birth certificate to accurately reflect their gender identity are governed by state laws and administrative polices and often include intrusive and outdated requirements, such as proof of sex reassignment surgery and court orders.</p> <p>According to the <i>National Center for Transgender Equality</i>, burdensome requirements and prohibitive costs prevent the majority of transgender individuals from obtaining accurate identity documents.<sup>743</sup></p>
	Documents amended	Birth certificate, driver's license, passport.

<sup>739</sup> National Center for Transgender Equality, ID Documents Center, Last updated 5 June 2017.

<sup>740</sup> Ibid.

<sup>741</sup> Ibid.

<sup>742</sup> Observations made by lawyer Sasha Buchert, Lambda Legal, USA.

<sup>743</sup> Transgender Law Center: Identity Document Laws and Policies: <http://transgenderlawcenter.org/equalitymap>.

*Birth certificate*

In 10 states and one district (Washington, California, Hawaii, Minnesota, Pennsylvania, New York, Massachusetts, Rhode Island, Connecticut, Maryland, District of Columbia), it is possible to have a new birth certificate and change gender marker without requiring sex reassignment surgery (SRS) nor a court order.<sup>744</sup>

For example, in California, according to the Health and Safety Code, §§ 103425-103445, 103426 (as added by AB 1121, July 2014), the applicant must make a request to the CA Department of Public Health with a statement from a physician that the person has "undergone clinically appropriate treatment for the purpose of gender transition, based on contemporary medical standards."<sup>745</sup>

Twelve states (Oregon, Nevada, Utah, Kansas, South Dakota, Mississippi, New Hampshire, Alaska, West Virginia, Indiana, Vermont, Wyoming) are unclear regarding the requirements and/or may require a court order. For example, the state of Wyoming requires a court order stating that "the sex of an individual has been changed", according to the administrative code WY Rules and Regulations HLTH VR Ch. 10 s 4(e)(iii) (2004).<sup>746</sup> It seems unclear whether this means SRS is required or if other clinical treatments are accepted. The applicant should submit a birth certificate application, a certified court order with the name and/or gender changes, and payment of fees.<sup>747</sup>

Twenty-two states (Arizona, New Mexico, Montana, North Dakota, Colorado, Nebraska, Iowa, Missouri, Arkansas, Wisconsin, Illinois, Louisiana, Kentucky, Virginia, North Carolina, Alabama, Georgia, Florida, Delaware, New Jersey, Maine) require proof of SRS. In Alabama, the gender marker on a birth certificate will be amended upon receipt of a certified copy of an order of a court indicating that the "sex... has been changed by surgical procedure and that the name of the individual has been changed" (Alabama Code § 22-9A-19, 22-9A-21).<sup>748</sup>

Oklahoma, Texas, Ohio and South Carolina have unclear or unwritten policies. Idaho and Tennessee do not allow the gender marker on birth certificates to be amended.

*Driver's license*

Fifteen states and one district (Washington, Oregon, Alaska, Hawaii, New Mexico, West Virginia, Virginia, Pennsylvania, District of Columbia, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire) accept a large range of documents from licensed professionals and do not require SRS. In the District of Columbia, the applicant must change their name with the Social Security Administration and then submit a court order authorising the name change and a "gender designation" form signed by a medical professional or social service provider.<sup>749</sup>

Fourteen states (Idaho, California, Nevada, Arizona, Colorado, Nebraska, Minnesota, Wisconsin, Illinois, Indiana, Ohio, Florida, New York, Vermont) accept a limited range of documents by professionals and/or require name change by court order. They do not require SRS.<sup>750</sup>

<sup>744</sup> Transgender Law Center: Identity Document Laws and Policies – Birth Certificate <http://transgenderlawcenter.org/equalitymap>.

<sup>745</sup> Assembly Bill No 1121 [http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1101-1150/ab\\_1121\\_bill\\_20131008\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1101-1150/ab_1121_bill_20131008_chaptered.pdf); National Center for Transgender Equality: ID Documents Center – California: [www.transequality.org/documents/state/california](http://www.transequality.org/documents/state/california).

<sup>746</sup> Lambda Legal, "Changing Birth Certificate Designations: State-by-State Guidelines", 2 March 2015: <http://www.lambdalegal.org/know-your-rights/transgender/changing-birth-certificate-sex-designations>.

<sup>747</sup> National Center for Transgender Equality: ID Documents Center – Wyoming: <http://www.transequality.org/documents/state/wyoming>.

<sup>748</sup> National Center for Transgender Equality: ID Documents Center – Alabama: <http://www.transequality.org/documents/state/alabama> and FindLaw, "Alabama Code Title 22. Health, Mental Health, and Environmental Control. § 22-9A-19", <http://codes.findlaw.com/al/title-22-health-mental-health-and-environmental-control/al-code-sect-22-9a-19.html>.

<sup>749</sup> National Center for Transgender Equality: ID Documents Center – District of Columbia: <http://www.transequality.org/documents/state/-district-columbia>.

<sup>750</sup> National Center for Transgender Equality, ID Documents Center: <http://www.transequality.org/documents> and Transgender Law Center: Identity Document Laws and Policies – Driver's license <http://transgenderlawcenter.org/equalitymap>.

Four states (Utah, Michigan, Kansas, Maryland) require proof of clinical treatment and/or other updated documents in which the gender marker has been changed. They do not require SRS. For example, in Kansas, the person must submit to the Kansas Department of Motor Revenue: any updated legal document(s) demonstrating the name change and a request including a statement from a physician saying the person has undergone appropriate clinical treatment.<sup>751</sup>

Thirteen states (Montana, Wyoming, Oklahoma, Texas, Iowa, Missouri, Louisiana, Kentucky, Tennessee, Alabama, Georgia, North and South Carolina) require proof of SRS, a court order and/or an amended birth certificate. In Wyoming, the applicant must first change their name with the Social Security Administration and then submit all three mentioned documents to the Department of Transportation.<sup>752</sup>

Four states (Arkansas, Mississippi, North and South Dakota) have unclear, unwritten or unknown policies.<sup>753</sup>

*Passport Gender Change Policy (June 2010)*

Since the inception of this policy, an applicant is not required to have undergone SRS, but must provide a certificate from a physician saying they have undergone clinical treatment for gender transition. Issued by the State Department, this policy applies to all federal states. If the identity documents have already been changed, the certificate is not required, and the amended documents are sufficient to change gender on a passport.<sup>754</sup>

<sup>751</sup> National Center for Transgender Equality: ID Documents Center – Kansas. [www.transequality.org/documents/state/kansas](http://www.transequality.org/documents/state/kansas)

<sup>752</sup> National Center for Transgender Equality: ID Documents Center – Wyoming. <http://www.transequality.org/documents/state/wyoming>

<sup>753</sup> Transgender Law Center: Identity Document Laws and Policies > Driver's license <http://transgenderlawcenter.org/equalitymap>

<sup>754</sup> National Center for Transgender Equality, "Understanding the Passport Gender Change Policy", March 2014. [http://www.transequality.org/sites/default/files/docs/kyr/passports\\_2014.pdf](http://www.transequality.org/sites/default/files/docs/kyr/passports_2014.pdf).

# Oceania

by Zhan Chiam

I am pleased to present information for 10 out of the 14 countries in Oceania<sup>755</sup> in this year's report, primarily on legal gender recognition. This increase from previous years has been possible through the invaluable work of Pacific researchers, who are working across their region to gather baseline data on the rights and lived realities of trans, gender diverse and cultural gender communities in the Pacific.

Oceania as a region is unique in many ways – it is enormous geographically, covering over 100 million square kilometres of the Pacific Ocean, while having a land mass of only 8.5 million square kilometres with the majority of that being in Australia and Aotearoa New Zealand.<sup>756</sup> Most of the Oceania's population is also concentrated in these two countries, with the remainder in the regions of Micronesia, Melanesia and Polynesia. Aotearoa New Zealand and Australia are also the two wealthiest countries in the region and home to a significant number of Pacific migrants. The region is also home to a rich mixture of existing indigenous gender identities, some of whom have continually existed and survived colonialism, and are part of the fabric of life in those communities.

The availability of legal gender recognition in Oceania is also concentrated in the two wealthy countries – which is not to say that people who are trans, gender diverse or have cultural gender identities are safer, healthier or happier there, just that the indicators by which their rights have been recorded (including in this report) have skewed away from indigenous understandings of quality of life. It is my deep hope that indigenous researchers from the region can offer the rest of the world country-by-country indicators and insights into the priorities, opportunities, and access to rights of these communities in all of Oceania, including in Aotearoa New Zealand and Australia.

Based on existing research in the region, except for Aotearoa New Zealand and Australia, the rest of Oceania sees an absence of legal gender recognition options, through either process. Name changes are sometimes possible, such as in **American Samoa, Kiribati, Marshall Islands and Tonga**, in cases where there was an incorrect name registered. In the **Cook Islands, Fiji and Samoa**, name change is available without that restriction.

The more thorough research coming out of **Fiji** is also revealing in terms of the relevance of these processes to indigenous communities, where there is less emphasis, especially for trans women, on changing one's name than one's gender marker because of the significance of name to family ties and lineage. This may be the case in other countries in the Pacific as well.

Information on criminalisation in the region is also scarce, however, **Tonga** has the unlikely honour of having trans women criminalised in legislation (*de jure* criminalisation), under the umbrella of an anti-sex work provision in its *Criminal Offences Act*. We did not come across records of the provision being used, which would be especially problematic in the context of a country with no option for legal gender recognition.

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<sup>755</sup> According to ILGA World's grouping of regions: <https://ilga.org/about-us/regions>

<sup>756</sup> <https://www.iucn.org/regions/oceania/about>

**Aotearoa New Zealand** has, unfortunately, not advanced in reforming its birth certificate gender marker change process, despite a Parliament Select Committee recommendation in 2017 that it should align with the country's passport process. To change the gender marker on a birth certificate, one follows a judicial rather than administrative process which may still require medical interventions, and which does not have a third gender option. On the other hand, the passport process already in existence is far less onerous and allows for 'X' markers.

Meanwhile, progress remains steady in **Australia** – in the majority of states and territories, “sex reassignment surgeries” are no longer required to alter one's birth certificate, and, in Victoria, a person can now opt for a birth certificate without any gender marker.

As Oceania makes clear, there is no one-size-fits-all for trans rights. Within this complexity also lies its beauty, and I look forward to more in-depth research coming from the region and the sharing of this expertise with the rest of the world.



## American Samoa

	<b>Name change</b>	Nominally possible, with unclear requirements.
	<b>Gender marker change</b>	Nominally possible, with unclear requirements.
	<i>Quote/details</i>	<p>Based on <i>Application of Mase</i> CA No. 97-02. (Trial Div. 2004) the only name changes allowed are where an error has been made, or to reflect adoption. Although American Samoa does not have legislative provisions for change of name, the High Court has granted name change to petitioners so long as it is not for fraudulent purpose or infringes the rights of others: <i>Application of Amataga</i> CA No. 85-95. (Trial Div. 1995).<sup>757</sup></p> <p>The National Center for Transgender Equality cites anecdotal reports of sex/gender markers being changed on birth certificates with medical proof of a “change in sex.”<sup>758</sup></p>

<sup>757</sup> Source: National Center for Transgender Equality: <http://www.transequality.org/documents/state/american-samoa>

<sup>758</sup> Source: Pacific Sexual and Gender Diversity Network. Also see: <http://www.transequality.org/documents/state/american-samoa>





# Australia

	<b>Name change</b>	<b>Possible.</b>
	<i>Quote/details</i>	<p>In common law, a person is taken to have changed their name simply by taking and using the name. However, to take full legal effect, a deed poll or application to the local Births, Deaths and Marriages Registry for a name change certificate is necessary.</p>
	<b>Gender marker change</b>	<b>Possible, with varying requirements across the country.</b>
	<i>Legislation</i>	<p>Combination of legislation and policy at both State/Territory and Federal levels.</p> <p>Each State and Territory has legislation that allows for birth certificates to be amended and policy guidance on name/gender marker change, while the Federal government has policy that gives guidance on change of gender markers on Australian government records. Surgery and/or hormone therapy are not required to change one's gender in federal government records.<sup>759</sup></p>
	<i>Documents amended</i>	<p>The different jurisdictions have varying levels of requirements, some of which are improving to accord with rights standards. As of August 2019, five of Australia's eight states and territories have clear legislation stating that the jurisdictions no longer require sex reassignment surgery.<sup>760</sup> Meanwhile, New South Wales and Queensland still require at least one surgical procedure, and Western Australia requires a "medical or surgical procedure", which can be hormone therapy, in order to change one's gender marker.<sup>761</sup> Tasmania allows people 16 years and over to self-determine their gender identity on documents without surgical or other medical interventions.<sup>762</sup></p>
	<i>Documents amended</i>	<p>Birth certificate, driver's license, Medicare card, passport.</p> <p>The cardinal document in Australia for these purposes is the birth certificate, which is issued by each State or Territory.</p> <p>In some jurisdictions, a person born outside Australia can also apply for a Recognised Details Certificate, and which records a person's new sex/gender and current name.</p>
	<i>Third gender option</i>	<p>Possible on some documents.</p> <p>Australian passports, as a federal document, can have an "X" marker because where sex and/or gender information is collected and recorded in a personal record by a federal government agency, individuals should be given the option to select M (male), F (female) or X (Indeterminate/Intersex/Unspecified).</p> <p>The Australian Capital Territory, New South Wales and South Australia provide "X" marker options in limited circumstances. Victoria already allows a person to request a birth certificate without the "sex" category, and, as a result of recent law reform, will soon allow people to "nominate a descriptor other than 'male' or 'female'."<sup>763</sup></p>

<sup>759</sup> Australian Government, "Australian Government Guidelines on the Recognition of Sex and Gender", July 2013, p. 5: <https://www.ag.gov.au/sites/default/files/2020-03/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.pdf>

<sup>760</sup> Source: Sally Goldner, Transgender Victoria.

<sup>761</sup> See Alastair Lawrie: <https://alastairlawrie.net/2020/05/02/did-you-know-trans-people-in-nsw-and-queensland-still-require-surgery-to-update-their-birth-certificates/>

<sup>762</sup> *Births, Deaths and Marriages Registration Act 1999* (TAS), Part 4A.

<sup>763</sup> Based on the *Births, Deaths and Marriages Registration Amendment Bill 2019* (VIC), passed on 27 August 2019. See: <https://tgv.org.au/TGV-BCR-Facts.pdf>



## Cook Islands

	<b>Name change</b>	Possible, not trans-specific.
	<i>Legislation</i>	<i>Births and Deaths Registration Act 1973, s.18.</i>
	<i>Quote/details</i>	The Act allows a person over the age of 21, or who is married, or has been married, to change their surname, first name or Christian name through a deed poll. Similarly, the parents of a person who has not yet turned 21 or been married, may change their surname, first name or Christian name by deed poll. <sup>764</sup>
	<b>Gender marker change</b>	Not possible.

<sup>764</sup> See: [http://www.paclii.org/ck/legis/num\\_act/badra1973301/](http://www.paclii.org/ck/legis/num_act/badra1973301/)



## Fiji

	<b>Name change</b>	Possible, not trans-specific.
	Legislation	Births, Deaths and Marriages Registration Act 1975, s.15. <sup>765</sup>
	Quote/details	<p>Registration of change of name</p> <p>15 (1) Any person who has attained the age of 21 years or is married or has at any time been married may by deed poll change his or her name, whether as to his or her surname or as to his or her forename.</p>
	<b>Gender marker change</b>	Not possible.
	Situation	<p>A series of legal gender recognition consultations held in 2019 revealed that many transgender persons did not want to change their names because:</p> <p><i>In the iTaukei (ethnic Fijian) community, names hold strong cultural significance related to family ties and lineage... Names, particularly surnames, are attached to family members such as grandparents and a legacy is bestowed on a person when names are replicated. It is widely believed that by allowing for change of name, these cultural ties would be affected and could possibly lead to shaming the family. Others questioned whether there would be the same problems if someone only changed their first name, and not their father's family name. The position adopted by participants in support of legal gender recognition was to avoid conflict with the cultural significance of names.<sup>766</sup></i></p> <p>As a result, change of gender marker, especially that in birth certificates, and especially for trans women, was identified as particularly important for validating other identity documents, and to avoid discrimination and “gender policing” by others. On the other hand, for trans men, who already possess male names inherited from their grandfathers, gender marker change was not a priority. However, they were supportive of trans women who wished to change their gender markers.<sup>767</sup></p>

<sup>765</sup> See: <https://www.laws.gov.fj/Acts/DisplayAct/914>

<sup>766</sup> APTN and Haus of Khameleon, *Legal Gender Recognition in Fiji – a legal and policy review in the context of human rights 2019* (upcoming).

<sup>767</sup> Ibid.



# Kiribati




	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.
	<i>Situation</i>	Legislation in Kiribati does not provide for change of identity documents. The <i>Births, Deaths and Marriages Registration Ordinance</i> only provides for change of name up to two years after the birth of a child (section 22). <sup>768</sup> Civil society reports that fraud provisions may place a person seeking to change their details at risk. <sup>769</sup>

<sup>768</sup> See: [http://www.paclii.org/ki/legis/consol\\_act/bdamro436/](http://www.paclii.org/ki/legis/consol_act/bdamro436/)

<sup>769</sup> Source: Pacific Sexual and Gender Diversity Network.



## Marshall Islands

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible.
	<i>Situation</i>	Legislation in the Marshall Islands does not provide for change of identity documents. The <i>Births, Deaths and Marriages Registration Act 1988</i> only provides for change of name up to three years after the birth of a child (section 419). <sup>770</sup>

<sup>770</sup> Source: Pacific Sexual and Gender Diversity Network. See: [http://www.paclii.org/mh/legis/consol\\_act/bdamra1988383/](http://www.paclii.org/mh/legis/consol_act/bdamra1988383/)



## New Zealand / Aotearoa

	<b>Name change</b>	Possible.
	Legislation	<i>Births, Deaths, Marriages, and Relationships Registration Act 1995, ss.21A, 21B.</i>
	<b>Gender marker change</b>	Possible, with prohibitive requirements.
	Legislation	Legislation (not trans-specific) and Court application. <i>Births, Deaths, Marriages, and Relationships Registration Act 1995, s.28</i> (birth certificates for adults) and s.29 (birth certificates for children).
	Quote/details	<p>Section 28 of the Act allows and eligible applicant to apply to the Family Court for a declaration that their birth certificate show the sex specified in their application. To be eligible the person's birth must be registered, or registrable, in New Zealand, or if the person was born overseas, they must be a New Zealand citizen or permanent resident.</p> <p>The case in "<i>Michael</i>" v. Registrar-General of Births, Deaths and Marriages [2008] 27 FRNZ 58 described the test in s. 28 as "being satisfied that the applicant has assumed or always has the gender identity of the nominated sex. Secondly, that the applicant has the requisite intention to maintain the gender identity of the nominated sex. That 'test' is necessarily prospective and to a large extent can only be met by assurances from the applicant and a review and analysis of historical conduct and other social and psychological factors. The third step ... involves a three-limb test which must be satisfied on all levels on the basis of expert medical evidence."</p> <p>The Department of Internal Affairs summarised the medical evidence test as:</p> <div data-bbox="619 1137 1267 1509" style="border: 1px solid black; padding: 5px;"> <p><i>...ultimately the test is specific to each individual and must be adapted to their needs... The Court in Michael noted that change can never be 'complete'... The Court was satisfied that "Parliament did not intend an applicant should necessarily have to undergo all available surgical procedures, including full genital surgery, to satisfy the test under the section." What is required is "some degree of permanent physical change as a result of the treatment (including psychological treatment) received" ([50]). This means that every applicant does not have to go through full reconstructive surgery to meet the test, although some may do. The level of surgery required for each person will be particular to that person based on what their medical advisors are recommending, and what that individual personally feels is required to be comfortable with their gender identity. So there is no 'tick-box' list of treatments to reach the level of "permanent physical change" required. It will vary for every person and cannot be detailed any further because there are an infinite range of circumstances that may arise.</i></p> </div> <p>Evidence of a change of name is also proof to the Court that the person is committed to the nominated sex.</p> <p>It is not possible under s.28 to record a sex as "indeterminate" if the sex was previously recorded as "male" or "female" on the birth certificate. Section 29 allows a child's guardian to apply for a declaration as to the appropriate gender identity of the child, and there is no minimum age requirement. The criteria under s.29 differ from those under s.28.</p> <p>For passports, policy dictates that a person should submit a statutory declaration indicating the sex/gender they wish to be displayed in their passport, and how long they have maintained their current gender identity. A person can choose M (male), F (female) or X (indeterminate/unspecified). There is no need to amend the sex/gender marker on the birth certificate. There is also no minimum age requirement for passports.</p> <p>There was a Parliament Select Committee recommendation<sup>771</sup> from August 2017 that the birth certificate process should follow the</p>

<sup>771</sup> [https://www.parliament.nz/resource/en-NZ/SCR\\_74921/7d0edb73001c7f84cce5487118fdf27ae11bf613](https://www.parliament.nz/resource/en-NZ/SCR_74921/7d0edb73001c7f84cce5487118fdf27ae11bf613)

passports one (administrative, not judicial), including allowing a third gender option. A year later, the Select Committee proposed specific changes to the Bill amending both s.28 and s.29 of the Act along these lines, based on self-determination and with no requirement for medical evidence.<sup>772</sup> However, the second reading of this Bill was deferred by the Minister of Internal Affairs<sup>773</sup> in February 2019 and a Working Group was established to see what barriers to the current Family Court process could be removed without amending the law.<sup>774</sup>

The Working Group reported back to the Minister in early 2020 and, in late June, the Minister announced that the Bill's second reading would not take place in the current Parliamentary term, before the general election scheduled for 19 September 2020.

Trans, intersex and LGBTQI community groups expressed their disappointment in this decision and called for the Working Group's report to be released.<sup>775</sup> As at July 2020, the Minister was yet to release the report or the Government's response to it.



#### *Documents amended*

Birth certificate, passport, citizenship certificate.



#### *Third gender option*

Possible, on passports only.

<sup>772</sup> [https://www.parliament.nz/resource/en-NZ/SCR\\_79010/bea83bb6ba26f9fbbf543855e3bc08fa8d954b2a](https://www.parliament.nz/resource/en-NZ/SCR_79010/bea83bb6ba26f9fbbf543855e3bc08fa8d954b2a)

<sup>773</sup> <https://www.beehive.govt.nz/release/births-deaths-marriages-and-relationships-registration-bill-be-deferred>

<sup>774</sup> <https://www.dia.govt.nz/BDMReview-Working-Group-for-reducing-barriers-to-changing-registered-sex#:~:text=The%20Working%20Group%20was%20established,relevant%20to%20the%20current%20process>

<sup>775</sup> <https://genderminorities.com/2020/06/26/trans-and-intersex-communities-call-for-law-change-and-release-of-working-groups-report/>










## Samoa

	<b>Name change</b>	Possible.
	<i>Quote/details</i>	By deed poll to change Driver's License and Passport. Birth certificates cannot be altered.
	<b>Gender marker change</b>	Not possible.







# Tonga

	<b>Name change</b>	Not possible.
	Legislation	Births, Deaths and Marriages Registration Act, s.8.
	Quote/details	<p>Section 8(a).</p> <p>Names other than surnames cannot be altered except where there has been a mere clerical error. A person who is habitually known by a forename other than that in the register may swear an affidavit stating the fact in front of a sub-Registrar who will witness the affidavit and if satisfied as to its truth affix the court seal.</p>
	<b>Gender marker change</b>	Not possible.
	<b>Laws used against transgender and gender diverse people</b>	
	Legislation	Criminal Offences Act, s.81
	Quote/details	<p>Section 81. Trading in prostitution</p> <p>(5) Any male person who, whilst soliciting for an immoral purpose, in a public place with intent to deceive any other person as to his true sex, has on or about his person any article intended by him to represent that he is a female or in any other way impersonates or represents himself to be a female shall be guilty of an offence and shall upon conviction be liable to a fine not exceeding \$100 or to imprisonment for a period not exceeding one year or to both such imprisonment and such fine. (Inserted by Act 19 of 1978.)<sup>776</sup></p> <p>[DE JURE CRIMINALISATION]</p>

<sup>776</sup> [http://www.paclii.org/to/legis/consol\\_act/co136/](http://www.paclii.org/to/legis/consol_act/co136/)



# Vanuatu

	<b>Name change</b>	Not possible.
	<b>Gender marker change</b>	Not possible. <sup>777</sup>

<sup>777</sup> Source: Pacific Sexual and Gender Diversity Network.





[ilga.org](http://ilga.org)