

What is legal gender recognition?

- Legal gender recognition refers to the process by which individuals can change their legally recognized sex or gender to match their self-identified gender on forms of official documentation such as identification cards, passports, and birth certificates.

Why is it essential that trans and nonbinary people are able to obtain documents that recognize their gender identity?

- Respect for self-identification: Gender identity is deeply personal and subjective, and it is essential to respect an individual's self-identified gender. Allowing people to change their gender marker on official documents readily acknowledges and affirms their identity, promoting inclusivity and reducing discrimination.
- Mental health and well-being: For many trans diverse individuals, having identification documents that accurately reflect their gender is crucial for their mental health and overall well-being. Misgendering or being forced to present as a different gender can increase stress, anxiety, depression and even suicidal ideation. Providing a simple procedure for changing the gender marker helps alleviate these harmful effects.
- Access to rights and services: Accurate identification documents are necessary to legally recognize an individual's affirmed gender in various aspects of life, such as employment, education, healthcare access, housing rights, travel documentation, voting rights, marriage equality and adoption processes – just to name a few examples. A straightforward process ensures trans diverse individuals can exercise their rights without unnecessary barriers.
- Safety considerations: In some situations where identification is required, such as during police encounters, mismatched or outdated markers can expose trans individuals to harassment or violence due to misunderstanding or prejudice from others who may not understand or accept them.
- International standards: Many countries worldwide have recognized the importance of allowing individuals to change their gender markers easily by adopting progressive policies. By implementing similar procedures within Civil Registry systems

domestically, countries align themselves with international human rights standards and propel forward equality and inclusivity on a global scale.

How does the process of legal gender recognition vary across countries?

- The process varies significantly from country to country. Most countries do not allow for legal gender recognition for trans people at all. Some countries require surgeries or other medical interventions, compelling trans people to alter their bodies to match perceived gender norms, while others have more rights-respecting procedures that prioritize self-identification without imposing unnecessary, burdensome requirements.
- In some countries, *ad hoc* decisions by courts or officials govern access to legal gender recognition. Officials may lack awareness about trans issues, causing trans people to face difficulties in accessing accurate information and contributing to discrimination during the application process. Gender identity laws and policies can help ensure that trans people benefit from transparent, uniform procedures.

Can minors change their legally recognized gender?

- Laws regarding legal gender recognition for minors differ worldwide. Some jurisdictions allow minors to change their legally recognized genders with parental consent or court approval, while others may have stricter requirements or no provisions.

Should governments require trans people to undergo surgery or hormone treatment before changing their gender marker?

- No. Every individual has the human right to self-identify and express their gender identity. Every individual also has the right to bodily autonomy. For many trans people, medical interventions are not integral to their identity or desirable. For others, they are unaffordable or inaccessible, including due to lack of relevant medical expertise in local medical centers. Legal gender recognition based on self-determination ensures that trans diverse and nonbinary individuals can live authentically without discrimination or prejudice.

Should governments require a person to submit witness testimony, a psychological assessment or other proof of their nominated sex for a specified period before allowing them to change their gender marker?

- No. Every person is an expert in their own gender identity. Whether you are cisgender, trans diverse or use another term to describe your relationship to your gender identity, no one knows your lived experience better than you. A person's gender is not determined by what clothes they wear, with whom they are intimate or other factors that an external expert or other witness can evaluate.
- Because this requirement is less intrusive than medical requirements, some trans movements would prefer that countries create a gender identity law that requires some form of witness testimony rather than making no provisions for legal gender recognition at all.

What kind of state authority should determine whether a person can change their gender marker?

- Some countries require court approval for a person to change their gender marker. However, petitioning a court can be expensive and burdensome. The responsibility for gender recognition should generally lie with the Civil Registry or another accessible administrative body. It should be quick, inexpensive, and straightforward for the following reasons:
- In countries where it is not politically feasible to move to a pure self-determination process through a Civil Registry, other government agencies may be involved in gender marker determinations such as Ministries of Health. When this is the case, the state authority should prioritize inclusivity, equality, and respect for individual autonomy. It should consider input from medicine, psychology, and human rights experts to ensure fair and informed decision-making. The state authority needs to engage with transgender communities and advocacy groups while developing policies related to gender marker changes. This collaboration helps ensure that the needs and experiences of trans diverse individuals are properly understood and considered.

What can governments learn from countries like Argentina, which passed the world's first Gender Identity Law based on self-determination?

- Argentina passed its Gender Identity Law in 2012. By removing the barriers to legal gender recognition, such as the need for medical diagnosis, gender-affirming surgery,

or a judge's opinion, this law allows trans diverse people the right to self-identify and "the freedom to develop themselves according to their gender identity." Additionally, they must be treated according to their gender identity, with all documents reflecting their name, image and sex.

- As of June 2023, 16,090 people had successfully changed their gender markers in Argentina since the law passed in 2012. Many people report a complete change for the better in their lives. Incidents of violence decreased, society became more accepting, and they could participate fully in all aspects of their lives. They could complete their education, be gainfully employed, and even participate in politics at the highest level. Contrary to fears expressed in some countries that are considering gender identity laws based on self-determination — for instance, the claim that such laws will “erase women” or create public safety concerns — there have been no adverse outcomes of any kind with regard to women’s rights, gender equality, or public safety as a result of Argentina’s law. Advancements in gender equality across the board, including improved access to abortion, have occurred in parallel with advances for trans people’s rights.

What other best practices can countries learn from?

As of 2023, there are about 18 countries where trans people can benefit from legal gender recognition based on self-determination. These countries have exemplary laws that can be models for other countries considering legal gender recognition for trans people.

For example, Malta’s law makes legal gender recognition available to refugees.

Chile’s gender identity law recognizes key human rights principles, including the principle of non-pathologization; the right of every trans person not to be treated as sick.

New Zealand’s law includes a pathway to legal gender recognition for children of any age.

Do cisgender women lose access to protection against discrimination when anyone can seek a female gender marker?

- No. Cisgender women do not lose protection against discrimination when anyone can seek a female gender marker. The ability of individuals to pursue a particular gender marker does not diminish the rights and protections afforded to cisgender women.

One common issue raised by anti-gender movements involves bathroom access for transgender women – a concern based on unfounded fears about safety or privacy violations in public restrooms. Numerous studies have shown no increase in safety risks when allowing trans people access to facilities matching their gender identity.

- It is vital to ensure that all individuals are treated fairly and without discrimination, regardless of gender identity or expression.

What does international law say about the right to legal gender recognition?

- The UN High Commissioner for Human Rights has recognized the right to legal gender recognition as an essential aspect of the right to privacy and personal autonomy.
- United Nations treaty bodies (including the Human Rights Committee), the Committee on the Elimination of Discrimination against Women, and the Committee on Torture, have called upon States to provide individuals with the opportunity to change their legally recognized gender through a quick, accessible and transparent procedure.
- Human rights bodies have issued rulings emphasizing the importance of legal gender recognition. As far back as 2002, the European Court of Human Rights, in the case of Christine Goodwin vs the United Kingdom, held that states must provide a means for transgender individuals to obtain new identification documents reflecting their lived gender. Advisory Opinion 24/17 of the Inter-American Court of Human Rights (IA Court) concluded that States must guarantee that people can adjust the image, name, gender or, where appropriate, the sex listed in record systems and legal documents to bring these in line with their gender identity and expression.
- While international law provides guidance on legal gender recognition, it does not prescribe specific requirements or procedures. Each country has its own laws and regulations governing this issue.
- Overall, international law encourages states to respect an individual's self-identified gender identity and ensure they can obtain official documents reflecting their lived gender without unnecessary obstacles or discrimination.

See also:

- Yogyakarta Principles (YP+10): Principle 31
<https://yogyakartaprinciples.org/principle-30-yp10/>
- Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights

- Council of Europe: “Right to self-determined gender identity and States’ positive obligations.”
- European Court of Human Rights: Hungary has violated the European Convention on Human Rights

Should governments recognize nonbinary gender markers?

Many people do not identify as female or male and prefer a different gender marker. In some jurisdictions, nonbinary individuals can obtain official documents that reflect a nonbinary or third-gender option instead of being limited solely to female or male designations. Governments should recognize nonbinary gender markers for several reasons:

- Inclusivity and equality: Recognizing nonbinary gender markers is crucial to creating a more inclusive society that respects and acknowledges the diversity of human identities. It ensures that individuals who identify as nonbinary are not forced to conform to binary gender norms.
- Human rights: Everyone deserves to have their identity recognized and respected by the government. By identifying nonbinary gender markers, governments can uphold the fundamental human rights of individuals who do not fit within traditional female or male categories.
- Mental health and well-being: Denying recognition of nonbinary genders can lead to feelings of marginalization and invalidation for those who identify as such. These experiences can have detrimental effects on mental health and overall well-being. Recognizing nonbinary gender markers helps create an environment where everyone feels valued and supported.
- Data collection: Accurate data collection is essential for effective policy-making regarding healthcare, education, employment, and social services. By recognizing nonbinary genders on official documents like identification cards or passports, governments can ensure that data accurately reflects the diverse population they serve.
- International recognition: A small but growing number of countries in all parts of the world recognize nonbinary gender identities. Countries such as Argentina, Malta, and Nepal lead the way with “X” or other nonbinary gender markers available to everyone based on self-determination. Over a dozen other countries provide for “X” markers in some jurisdictions or under some circumstances. For instance, some require court

orders or only provide nonbinary markers to intersex people based on a medicalized model.

- Progression toward equality: Eliminating binary options on identity documents demonstrates a commitment to equality. It sends a powerful message that society is willing to adapt and accommodate the needs of all individuals, regardless of their gender identity.

Why are gender markers needed on identity documents at all?

There are several compelling reasons gender markers on documents may not be necessary at all. Countries such as The Netherlands are taking steps to remove them from public-facing documents altogether. Here are some key points to consider:

- Respect for self-identification: Gender is a deeply personal and individual experience, and individuals should have the right to self-identify without being constrained by societal norms or legal requirements. Forcing people to choose between two limited options, or even a third "X" or nonbinary option, can be alienating and invalidating. By eliminating gender markers, states can create space for inclusivity, acknowledge the existence of diverse gender identities, and allow people to express their gender identity freely, reducing the potential for discrimination or misgendering.
- Privacy concerns: Gender markers on identification documents can inadvertently disclose personal information that individuals may not wish to share publicly. Some argue that others don't have to know an individual's assigned sex at birth or their current gender identity unless explicitly relevant in specific situations (e.g., medical emergencies).
- Reducing discrimination: Gender markers can contribute to discrimination against transgender and nonbinary individuals who may face challenges when presenting identification that does not align with their appearance or chosen name/gender marker. Eliminating these markers helps reduce harassment, prejudice, and denial of services based on perceived incongruence.
- Technological advancements: With advancements in technology such as biometric identification systems (e.g., facial recognition), reliance on physical characteristics like gender becomes less necessary for accurate identification.
- Simplification of administrative processes: Eliminating gender markers simplifies administrative procedures by reducing the need for updates due to changes in an individual's gender identity over time. This change would streamline bureaucratic processes while ensuring accuracy in personal records.