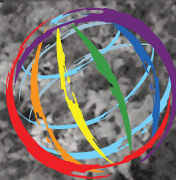


# MAPPING Trans Rights IN COSTA RICA



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Human Rights for LGBTIQ People Everywhere

## About OutRight

Every day around the world, LGBTIQ people's human rights and dignity are abused in ways that shock the conscience. The stories of their struggles and their resilience are astounding, yet remain unknown—or willfully ignored—by those with the power to make change. OutRight Action International, founded in 1990 as the International Gay and Lesbian Human Rights Commission, works alongside LGBTIQ people in the Global South, with offices in six countries, to help identify community-focused solutions to promote policy for lasting change. We vigilantly monitor and document human rights abuses to spur action when they occur. We train partners to expose abuses and advocate for themselves. Headquartered in New York City, OutRight is the only global LGBTIQ-specific organization with a permanent presence at the United Nations in New York that advocates for human rights progress for LGBTIQ people.

[hello@OutRightInternational.org](mailto:hello@OutRightInternational.org)

<https://www.facebook.com/outrightintl>

<http://twitter.com/outrightintl>

<http://www.youtube.com/lgbthumanrights>

<http://OutRightInternational.org/iran>

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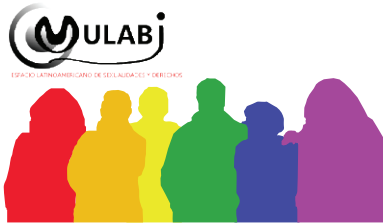


# MAPPING Trans Rights IN COSTA RICA



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## About Mulabi

Mulabi – Espacio Latinoamericano de Sexualidades y Derechos [Latin American Space for Sexualities and Rights] – is an LGBTI non-governmental organization (NGO) where activists from different identities (sexual, gender, ethnic, national and others) converge. Mulabi provides a space to discuss sexualities and rights in Latin America, working with the Ministry of Health and the Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC) [Center for Research and Promotion of Human Rights in Central America] to design guidelines against discriminatory practices focused on trans and intersex people as well as on LGBTI health related issues. Mulabi also works closely with the Organization of American States Working Group on these issues, and advocates in many national and international settings for a Gender Identity Recognition bill. It is Mulabi who supports and promotes the Gender Identity Recognition Bill (Number 19841) before the Costa Rican Legislative Assembly, which has already been received by the Human Rights Commission.

[mulabi@mulabi.org](mailto:mulabi@mulabi.org)

<https://www.facebook.com/MulabiEspacio-Latinoamericano-de-Sexualidades-y-Derechos-285257348197502/>

<http://www.mulabi.org/>



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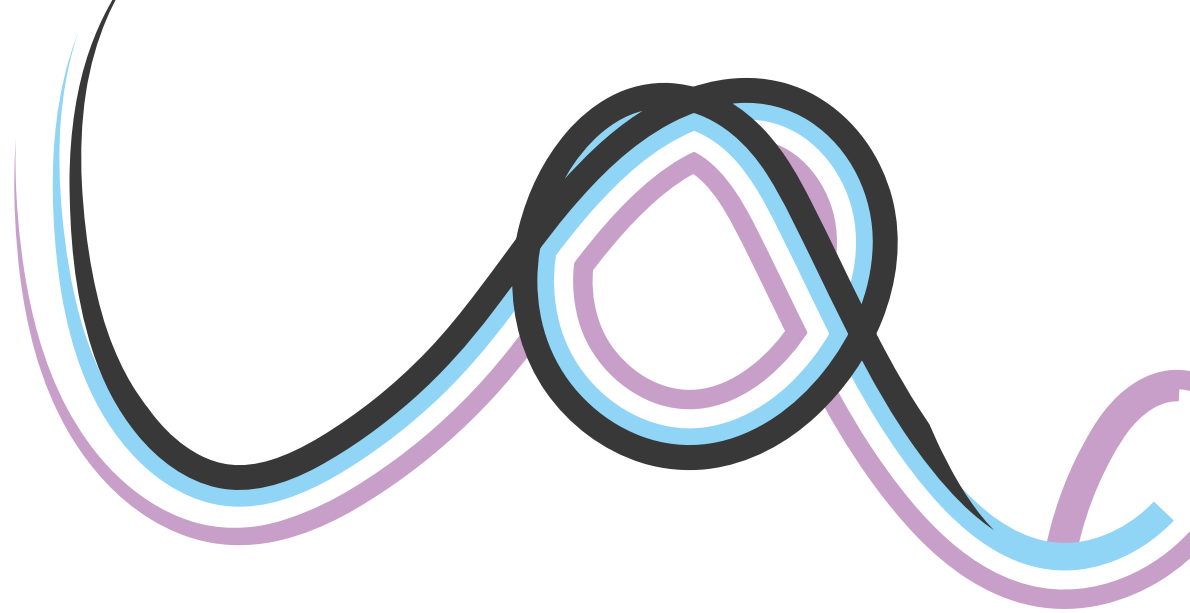
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# Terminology<sup>1</sup>

<b>Feminization:</b>	The process of making something more characteristic of, or associated with, women.
<b>Gender:</b>	A social construct used to classify a person as a man, woman, or some other identity. It is fundamentally different from the sex one is assigned at birth.
<b>Gender Binarism:</b>	The idea that human gender exists in only two forms: masculine and feminine. The term also describes the system in which a society divides people into male and female gender roles, gender identities and attributes.
<b>Gender Identity:</b>	Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.
<b>Homophobia:</b>	Homophobia is an irrational fear of, hatred or aversion towards lesbian, gay or bisexual people. Because the term homophobia is widely understood, it is often used in an all-encompassing way to refer to fear, hatred and aversion towards LGBT people in general.
<b>Intersex:</b>	An intersex person is born with sexual anatomy, reproductive organs, and/or chromosome patterns that do not fit the typical definition of male or female. This may be apparent at birth or become so later in life. An intersex person may identify as male or female or as neither. Intersex status is not about sexual orientation or gender identity: intersex people experience the same range of sexual orientations and gender identities as non-intersex people.

<sup>1</sup> These definitions have been drawn from the following sources: the Yogyakarta Principles; the United Nations Free and Equal Campaign; the University of California, Los Angeles' LGBT Campus Resource Center; the University of California, San Francisco LGBT Resource Center; and Amnesty International.

<b>Lesbophobia:</b>	Lesbophobia is an irrational fear of, hatred or aversion towards lesbian people.
<b>LGBT:</b>	LGBT stands for “lesbian, gay, bisexual and transgender.” While these terms have increasing global resonance, in different cultures other terms may be used to describe people who form same-sex relationships and those who exhibit non-binary gender identities.
<b>LGBTI:</b>	Lesbian, gay, bisexual, transgender and intersex.
<b>Pathologization:</b>	The process of regarding or treating (someone or something) as psychologically abnormal or unhealthy.
<b>Psychiatrization:</b>	The process of treating or analyzing (someone or something) psychiatrically.
<b>Sex:</b>	A categorization based on the appearance of the genitalia at birth.
<b>Sexual Diversity:</b>	This term refers to the full range of sexuality which includes all aspects of sexual attraction, behavior, identity, expression, orientation, relationships and response. It refers to all aspects of humans as sexual beings.
<b>Sexual Orientation:</b>	Refers to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.
<b>Sexuality:</b>	A person’s exploration of sexual acts, sexual orientation, sexual pleasure and desire.
<b>SOGI:</b>	Sexual Orientation and Gender Identity.
<b>Trans / Transgender:</b>	Transgender (sometimes shortened to “trans”) is an umbrella term used to describe a wide range of identities—including transsexual people, cross-dressers (sometimes referred to as “transvestites”), people who identify as third gender, and others whose appearance and characteristics are perceived as gender atypical. Transwomen identify as women but were classified as males when they were born. Transmen identify as men but were classified female when they were born. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not.
<b>Transition:</b>	This term is primarily used to refer to the process a gender variant person undergoes when changing their bodily appearance either to be more congruent with the gender/sex they feel themselves to be and/or to be in harmony with their preferred gender expression.
<b>Transphobia:</b>	An irrational fear, hatred or aversion towards transgender people.
<b>Yogyakarta Principles:</b>	A set of international principles relating to sexual orientation and gender identity, comprising a guide to human rights which affirms binding international legal standards with which all States must comply.





# Executive Summary

**This short report sets out the research findings of Mulabi and OutRight Action International in relation to the legal and public policy framework protecting the human rights of transgender people in Costa Rica.**

The report provides an update on the developing framework around the rights to legal gender recognition, education, work and health for trans people, concluding with a series of recommendations to the Costa Rican authorities to ensure greater respect for these rights in law, policy and practice.

The report shows that while Costa Rica has ratified the main international human rights treaties and conventions and the country's Constitution includes key human rights protections, there is still a lot of room for improvement in developing – and implementing – a legal and public policy framework that protects the human rights of transgender people. The government has issued an important executive decree to eliminate discrimination against the “sexually diverse” population, but implementation by executive institutions has been slow.

**“The right to legal gender recognition – whereby everyone has the right to have their chosen gender identity legally recognized – is not yet recognized in law, policy or practice.**

The right to legal gender recognition – whereby everyone has the right to have their chosen gender identity legally recognized – is not yet recognized in law, policy or practice. While there have been some positive developments around identification documents, with a new ‘photograph regulation’ allowing trans people to match the image that appears on their ID document with

their self image, there still appears to be official confusion around the difference between sexual orientation and gender identity, while civil society organizations are demanding nothing short of a law that guarantees full legal gender recognition.

Costa Rica's Ministry of Public Education and the Center for Research and Promotion of Human Rights in Central America have developed a number of guidelines aimed at preventing discrimination in the educational system, including on the basis of gender identity. This guidance – along with new policies adopted by a number of Costa Rican educational institutions – should help facilitate trans people's enjoyment of the right to education, but the challenge will be to ensure that these guidelines work in practice.

With regard to the right to work, while Costa Rica's Labor Code prohibits discrimination, gender identity is not a specifically enumerated ground of discrimination, and there are no policies for promoting employment for trans people.

Despite the broad legal and policy framework supporting trans people's enjoyment of the right to health, including the National Sexuality Policy, they still face cultural and structural problems in the medical system, especially with regard to transition. Much more work is needed to ensure that trans people receive proper support when it comes to general health needs and the physical and mental processes implied in the transition, while civil society organizations are asking for a distinction to be made between general HIV care on the one hand, and comprehensive healthcare policies for trans people on the other.



# Key Recommendations

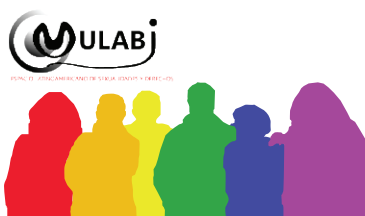
Key recommendations to the Costa Rican authorities include:

- **Provide explicit legal protection against discrimination** on grounds of gender identity and expression in all areas;
- **Draft and enact a law that guarantees legal gender recognition** – the right to rectify one's name and gender and make this coincide with a self image and gender identity with which one identifies;
- **Incorporate the topics of gender identity and gender expression** in the Education Ministry's comprehensive guidelines aimed at preventing discrimination in the educational system;
- Borrowing from Principle 12 of the Yogyakarta Principles, **take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of gender identity in public and private employment**, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration; and
- Overcome the obstacles faced by trans men and trans women in terms of safe transitioning, by **guaranteeing the necessary financial and human resources for access to gender reaffirming processes** for this population. The State should also invest in training for health care professionals to ensure their capacity to deal with such processes.

# Methodology

**The findings of this report are based on interviews and desk research.**

Mulabi and OutRight Action International extend their thanks to those who provided information for this report.



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# Human Rights Framework

## International Obligations

**Application of international human rights law is guided by the fundamental principles of universality, equality and non-discrimination.**

Everyone, irrespective of their sexual orientation and gender identity (SOGI), is entitled to enjoy the protection of international human rights law with respect to all human rights – civil, political, economic, social and cultural.<sup>2</sup>

Non-discrimination is a core human rights principle embodied in the Charter of the United Nations (UN), the Universal Declaration of Human Rights (UDHR) and core human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Non-discrimination clauses in international instruments typically require that human rights are made available to everyone without discrimination, and States ensure that their laws, policies and programs are not discriminatory in impact.<sup>3</sup> Costa Rica is a State Party to the ICCPR and ICESCR.

**According to the Costa Rican Civil Code, every person has the right to a name, to name himself or herself and be named according to who they feel they are and who they want to be.**

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<sup>2</sup> UNITED NATIONS. Discrimination and violence against individuals based on their sexual orientation and gender identity. Report of the Office of the UN High Commissioner for Human Rights to the UN Human Rights Council. May 4 2015. The full text of the Report is available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E)

<sup>3</sup> UNITED NATIONS. Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. Report of the Office of the UN High Commissioner for Human Rights to the UN Human Rights Council. November 17 2011. The full text of the Report is available at: [http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41\\_English.pdf](http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf)



The specific grounds of discrimination referred to in the core human rights treaties are not exhaustive. In its general comment No. 20 on discrimination, for example, the Committee on Economic, Social and Cultural Rights – the expert UN body that monitors implementation of the ICECSR – observed that “gender identity is recognized as among the prohibited grounds of discrimination.”<sup>4</sup>

The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (the Yogyakarta Principles) – developed and adopted by a meeting of human rights experts in Yogyakarta, Indonesia, in November 2006 – provide a universal guide to applying international human rights law to abuses experienced by Lesbian, Gay, Bisexual and Transgender (LGBT) people.<sup>5</sup>

Costa Rica is a State Party to the American Convention on Human Rights and has accepted the jurisdiction of the Inter-American Court of Human Rights, to which the Inter-American Commission on Human Rights and State parties to the Convention can refer cases. The Court, based in Costa Rica’s capital city San Jose, has found that sexual orientation and gender identity

are prohibited grounds of discrimination under the term “other social condition” in the Convention.<sup>6</sup> The Inter-American Commission on Human Rights, which has a mandate to promote respect for human rights in the Organization of American States (OAS) region and acts as a consultative body to the OAS in this area, has created a Rapporteurship “on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)”<sup>7</sup> and has made strong statements to support the “full enjoyment and exercise of the human rights of trans persons.”<sup>8</sup> The Inter-American Convention against All Forms of Discrimination and Intolerance explicitly lists gender identity and expression as prohibited grounds of discrimination, though Costa Rica has not yet ratified it.<sup>9</sup>

## National Law

Costa Rica has a solid legal framework, with a comprehensive bill of rights enshrined in the Political Constitution, which also provides for the country’s adherence to international human rights treaties and conventions.<sup>10</sup> Derived from

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4 See paragraph 32, UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), July 2 2009, E/C.12/GC/20. Full text available at: <http://www.refworld.org/docid/4a60961f2.html> and Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. Report of the Office of the UN High Commissioner for Human Rights to the UN Human Rights Council. November 17 2011. For full text, see supra note 3.

5 The Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity. March 2007. Full text available at: [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf)

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6 See Inter-American Court H.R., Case of Atala Rizzo and Daughters v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239. The full text of the Court’s Judgment is available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_239\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf).

7 IACHR. The IACHR creates Rapporteurship to address issues of Sexual Orientation, Gender Identity, Gender Expression, and Body Diversity. Inter-American Commission on Human Rights. November 25 2013. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/094.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/094.asp)

8 IACHR. On Transgender Day of Remembrance, the IACHR Expresses Concern About the Situation of Trans Persons in the Americas. Inter-American Commission on Human Rights. November 21 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/138.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/138.asp)

9 ORGANIZATION OF AMERICAN STATES (OAS). Inter-American Convention against All Forms of Discrimination and Intolerance, Signatories and Ratifications. The full text of the Convention is available at: [http://www.oas.org/en/sla/dil/docs/inter\\_american\\_treaties\\_A-69\\_discrimination\\_intolerance.pdf](http://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-69_discrimination_intolerance.pdf)

10 Universal Declaration of Human Rights (San Francis-

these constitutional obligations, as this report will show, the State has developed laws and public policies in some areas to respect, protect and fulfill the human rights of LGBT people.

## The Executive

The Costa Rican government has declared May 17<sup>th</sup> the National Day Against Homophobia, Lesbophobia and Transphobia, whereby public institutions are required to disseminate the meaning of the commemoration and promote the eradication of such prejudices.<sup>11</sup>

On May 12, 2015, the government enacted Executive Decree 38999,<sup>12</sup> to eliminate discrimination in the institutions of the executive branch. The decree orders the elimination of discrimination against the “sexually diverse” population who work for the executive branch and its service users. To bring the decree into effect, such institutions were given four months from its enactment to develop an institutional plan to include: human rights training for public functionaries; reforms to service provision so as to include the needs of the sexually diverse population; regulations to

eliminate discrimination; standards on using the inclusive and respectful language of human rights; and the resources for the implementation of the same.<sup>13</sup>

The decree also explained the type of measures that should be taken by executive branch institutions within six months from the enactment of the decree:

- To define ‘partner’ or similar terms to include a person who lives with someone of the same sex in a stable common-law relationship under the same roof and for a year or more.
- To allow for leave of absence in the case of a same sex partner’s serious illness or death.
- To establish sanctions for actions that discriminate on the basis of sexual diversity.
- The recognition of gender identities according to what is requested by the respective functionary or user.<sup>14</sup>

The decree reflects the executive branch’s political will to end discrimination on the basis of SOGI. However, the implementation of the decree is too slow: despite the fact that the deadline for the executive branch institutions to present their action plans to end discrimination on the basis of SOGI was September 14, 2015, many of them have not begun developing their plans and others have not yet finished them.<sup>15</sup>

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co: United Nations, 1945). American Convention on Human Rights (Costa Rica, 1969) Approved by Law 4534 of 1970. International Covenant on Civil and Political Rights (New York, 1966) Approved by Law 4229 de 1968. International Covenant on Economic, Social and Cultural Rights (New York, 1966) Approved by Law 4229 de 1968. Find out more at: Cesdepu-Costa Rica, “Existing international human rights instruments in Costa Rica”, Rodolfo Saborío (Compiler), <http://www.cesdepu.com/instint.htm> (Retrieved on September 22, 2015).

11 COSTA RICA. PRESIDENCY OF THE REPUBLIC and MINISTRY OF HEALTH. Executive decree No 34399 (Executive branch 2008), Article 1. Available at: [http://www.imprentanacional.go.cr/pub/2008/03/25/COMP\\_25\\_03\\_2008.html#\\_Toc193615796](http://www.imprentanacional.go.cr/pub/2008/03/25/COMP_25_03_2008.html#_Toc193615796)

12 COSTA RICA. PRESIDENCY OF THE REPUBLIC. Executive decree No 38999 (Executive branch 2015), Articles 1, 2, 3 and 4. Available at: <http://presidencia.go.cr/prensa/comunicados/funcionarios-que-discriminen-por-orientacion-sexual-seran-sancionados/>

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13 Ibid, Article 7.

14 Ibid, Articles 5 and 7.

15 In a communiqué with OutRight Action International on September 23, 2015, Yaruma Vásquez from the Costa Rica Bar Association affirmed: “the first challenge has been the integration of the commissions, it would seem like they have been formed by almost 100% of the corresponding instances

## The Judiciary

The Supreme Court, in its Session N°31-11, approved the Policy of Respect for Sexual Diversity in the justice system,<sup>16</sup> which establishes:

- Non-discrimination on the grounds of sexual orientation – though no express reference to gender identity – both in terms of the services provided for users, and in the treatment of and opportunities for those who work in the institution.
  - The development of all the administrative, normative, procedural, and operative measures necessary to guarantee respect for sexually diverse users, functionaries, or judicial officers.
  - The guarantee of the human, material, financial and technical resources necessary, and the creation of adequate organs, methods and procedures, to implement the policy.
- The identification and development of the affirmative actions or measures required to eliminate inequalities in terms of access to justice that affect the sexually diverse.
  - The development of sustained training and sensitization processes for judicial officers in order to change attitudes and the institutional culture with respect to the sexually diverse.
  - The guarantee of service provision based on criteria of efficiency, diligence, courtesy, and accessibility according to the demands and needs of the sexually diverse, which take into account their specific characteristics, and the elimination of all standards, practices and customs that have a discriminatory effect or result.
  - The provision of accurate, understandable and accessible information for the sexually diverse population.
  - The application of recommendations for non-revictimization in cases that involve sexually diverse minors.

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and training has begun for the members of these commissions. The mandates covering the elaboration of plans, programs and reforms in reference to internal regulations are in the initial stages of fulfillment. In general, there seems to be a clear disposition to fulfill the presidential mandate, but the organisms do not have the tools or means to do so in the short term, all the more given that the formation of the commissions and the design of a first draft of the work agenda took much longer than initially planned. The topic is entirely new for many people and authorities, which implies that the next challenge is to have enough information to define work agendas in an organized and coherent fashion.” Similarly, Natasha Jiménez, executive director of Mulabi, confirmed on September 23, 2015: “Mulabi has been called on to support the writing of plans and strategies against discrimination and we have implemented training in different institutions. Many institutions are as yet in the process and some have not even begun, while others have been taken by surprise by the Decree. It is certainly true that most didn’t make the September 14 deadline, but it has to be highlighted that some feel committed to the process.”

16 SUPREME COURT OF COSTA RICA. Circular N°123-11, Policy of Respect for Sexual Diversity. Approved in Session N°31-11 held on September 19 2011, Article XIII. Available at: [http://www.imprenal.go.cr/pub-boletin/2011/11/bol\\_01\\_11\\_2011.html](http://www.imprenal.go.cr/pub-boletin/2011/11/bol_01_11_2011.html)



# Legal Gender Recognition

**Internationally, the concept of a human right to legal gender recognition – that everyone has the right to have their chosen gender identity legally recognized, in official documents and registries for example – is gaining traction.**

UN mechanisms have called upon States to legally recognize transgender persons' preferred gender, without abusive requirements, including sterilization, forced medical treatment or divorce.<sup>17</sup> The Human Rights Committee – the expert UN body that monitors implementation of the ICCPR – has expressed concern regarding lack of arrangements for granting legal recognition of transgender people's identities. It has urged States to recognize the right of transgender persons to change their gender by permitting the issuance of new birth certificates and has noted with approval legislation facilitating legal recognition of a change of gender.<sup>18</sup>

The right to legal gender recognition is linked to and embedded in the rights to recognition before the law and to privacy, and the Yogyakarta Principles provide authoritative guidance in this regard. The right to recognition before the law is enshrined in the UDHR at Article 6 and in the ICCPR at

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<sup>17</sup> See UN Human Rights Committee (HRC), Consideration of reports submitted by States parties under article 40 of the Covenant: International Covenant on Civil and Political Rights: concluding observations of the Human Rights Committee: Ireland, 30 July 2008, CCPR/C/IRL/CO/3, para. 8. Available at: <http://www.refworld.org/docid/48c4ff452.html>; UN Human Rights Committee (HRC). *Concluding observations on the fourth periodic report of Ireland*, 19 August 2014, CCPR/C/IRL/CO/4, para. 7. Full text available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbol-no=CCPR/C/IRL/CO/4&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbol-no=CCPR/C/IRL/CO/4&Lang=En)

UN Human Rights Committee (HRC), *Concluding observations on the 7th periodic report of Ukraine: Human Rights Committee, 108th session, 8-26 July 2013: draft / prepared by the Committee*, 15 July 2013, CCPR/C/UKR/CO/7, para. 10. Available at: <http://www.refworld.org/docid/5390425d4.html>; and, UN Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: The Netherlands*, 5 February 2010, CEDAW/C/NLD/CO/5, paras. 46-47. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NLD-CO-5.pdf>

<sup>18</sup> Ibid, UN HRC.

Article 16, while Principle 3 of the Yogyakarta Principles provides that States should “[t]ake all necessary legislative, administrative and other measures to fully respect and legally recognise each person’s self-defined gender identity.” On the right to privacy, enshrined in the UDHR at Article 12 and in the ICCPR at Article 17, Principle 6 of the Yogyakarta Principles provides that States should “[e]nsure the right of all persons ordinarily to choose when, to whom and how to disclose information pertaining to their sexual orientation or gender identity, and protect all persons from arbitrary or unwanted disclosure, or threat of disclosure of such information by others.”<sup>19</sup>

In Costa Rica, the right to legal gender recognition is not yet recognized in law, policy or practice. Despite the advocacy efforts of civil society organizations, the country does not have legislation that allows changes to be made in birth, marriage or death certificates related to modifications to individuals’ gender. Luis Antonio Bolaños, acting Civil Affairs Officer, affirms, “The Organic Law of the Supreme Electoral Tribunal and Civil Registry only allows rectifications to be made in such certificates when errors have been made, and in the case of transsexualism [sic], they have not.”<sup>20</sup> There are resolutions that have denied such requests. However, there have been some positive developments in relation to identification documents.

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19 See the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, *supra* note 5.

20 MENA, Fabio. Registro Civil permite utilizar opción del ‘conocido como’ para nombre en cédula de población transexual [Civil Registry allows the use of the option ‘known as’ for the name in the transsexual population ID]. *crhoy.com*, December 8th 2014. Available at: <http://www.crhoy.com/registro-civil-permite-utilizar-opcion-del-conocido-como-para-nombre-en-cedula-de-poblacion-transexual/> (Retrieved on September 22, 2015).

## Identification Documents

According to the Costa Rican Civil Code, every person has the right to a name, to name himself or herself and be named according to who they feel they are and who they want to be.<sup>21</sup> To have a name is both a right and a duty, given that it constitutes the way in which people are linked in to social systems. For this reason, when trans people decide to change the name with which they are registered, they are exercising a fundamental right, but they also have to consider how to guarantee that such an action will help transform and not hinder their relationship with the state.

The fact that ID documents must include a photograph means that trans people can appear portrayed as they wish. In fact, until 2009, it was difficult for trans people to have ID documents that reflected their gender expression. In 2009, Natalia Porras, a trans

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21 Civil Code, (Costa Rica: Legislative Assembly, 1887) Article 49: “Every person has the right and the obligation to have a name that identifies him/herself, which will consist of one or at most two word used as a first/given name, followed by the father’s first last name/surname and the mother’s first surname, in that order”. In addition, Articles 54 to 58 state that: Article 54: Every Costa Rican registered in the Registry of the Civil Status (of persons) can change their name with the authorization of the Tribunal, which will be made by (via) the procedures of the voluntary jurisdiction promoted for that purpose. Article 55: Once submitted the change request, the Court/Tribunal will order the publication of an edict in the Official Journal granting a 15-day term to file oppositions. Article 56: In every name change or modification application/request the ‘Public Ministry’ (Public Prosecutor) will be heard and before deciding (solving) the proper the Tribunal shall obtain a report of ‘previous’ good conduct and lack of criminal records of the applicant. Also (the Tribunal) shall inform the Ministry of Public Security/Safety. Article 57: The name change or alteration does not extinguish nor modifies the obligations or liabilities incurred by a person under its previous name. Article 58: The pseudonym used by a person in a way that has acquired the significance/importance of the name, can be protected in accordance with the preceding articles of this chapter. Available at: [http://www.wipo.int/wipolex/es/text.jsp?file\\_id=220799](http://www.wipo.int/wipolex/es/text.jsp?file_id=220799) (Spanish version)



woman and activist in the Transvida group,<sup>22</sup> was able to make the Civil Registry accept a photograph showing her traditionally female appearance for her ID document.<sup>23</sup>

In order to enshrine these advances in legislation, in June 2010, the Supreme Electoral Tribunal promulgated Decree 08-2010, entitled the ‘Photograph Regulation’;<sup>24</sup> allowing trans people to match the image that appears on their ID document with their self-image. For example, trans women are able to appear in their ID documents wearing attire that is considered traditionally feminine and make up.<sup>25</sup> The decree establishes that it is the duty of the functionaries in charge of receiving and

entering the data provided by those applying for an ID document, as well as those in charge of reviewing it, to “ensure that each application is dealt with within a framework that fully respects the right to personal portrayal, and to the sexual identity of the user complying with the provisions of the Organic Law and of this regulation.”<sup>26</sup>

However, the name that the person has adopted can only appear in the ID document under the field of “Known as.”<sup>27</sup> The “Known as” field provides a space to add a pseudonym in the ID document when such a pseudonym has become as important as the name of the individual.<sup>28</sup>

But this does not solve the obstacles and resistance caused by the inconsistency between an individual’s registered name, the “Known as” field, and the photograph. Further, a name change in an ID document, despite being legally possible, is a costly and difficult process for which people are obliged to hire a lawyer and present medical certificates that pathologize their gender identity.

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22 ROJAS ZÚÑIGA, Nathalia. Natalia Porras, activista trans: “La sociedad nos estigmatiza como figuras sexuales” [Natalia Porras, trans activist: “Society stigmatizes us as sexual figures”]. Voces Nuestras, June 10th 2013. Available at: <http://vocesnuestras.org/2013-06-10/vn-noticias/natalia-porras-activista-trans-sociedad-nos-estigmatiza-figuras-sexuales>

23 MURILLO, Álvaro and VIZCAÍNO, Irene. TSE respetará “identidad sexual” en fotos de cédulas [TSE will respect “sexual identity” in ID photos]. La Nación, July 6th 2010. Available at: [http://www.nacion.com/archivo/TSE-respetara-identidad-sexual-cedulas\\_0\\_1132886828.html](http://www.nacion.com/archivo/TSE-respetara-identidad-sexual-cedulas_0_1132886828.html) (Retrieved on September 21, 2015).

24 COSTA RICAN SUPREME ELECTORAL TRIBUNAL. Decree 08-2010, which enacted the photography regulations for identity documents, published in La Gaceta N° 127 of July 1, 2010. Article 2: *Every person has the right to have his/her image and sexual identity respected when the photo to be inserted in a personal identity document is taken. This right has to be made compatible with the public interest of having an appropriate, safe and reliable identity document. To achieve this end, facial features must be shown in the photo in such a way that it is possible to identify the carrier of that identity document.* Available at: [http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=68240&nValor3=81266&strTipM=TC](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=68240&nValor3=81266&strTipM=TC)

25 IGLHRC. Situation of lesbian, bisexual, transsexual, transgender and intersex women in Costa Rica in regards to discrimination. Shadow Report submitted to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) on the occasion of its 49th -50th session. July 11-29, 2011. P. 7. Available at: [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/IIGLHRC\\_for\\_the\\_session\\_sp\\_CostaRica\\_CEDAW49.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/IIGLHRC_for_the_session_sp_CostaRica_CEDAW49.pdf) (Retrieved on September 21, 2015)

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26 See supra note 24, COSTA RICAN SUPREME ELECTORAL TRIBUNAL. Decree 08-2010, Article 4: Duties of Officials.

27 COSTA RICAN SUPREME ELECTORAL TRIBUNAL Decree N°7-2008: Article 2: The format of the identity document that will be in effect from November 3rd 2008 will be the following, taking into account the characteristics that stand out in bold letters below. Institute of Training and Education in Democracy, “Identification Documents, Issue 3 of Training” pp. 46-47. Available at: [http://www.tse.go.cr/pdf/fasciculos\\_capacitacion/documentos-de-identificacion.pdf](http://www.tse.go.cr/pdf/fasciculos_capacitacion/documentos-de-identificacion.pdf) (Retrieved on September 25, 2015): (...), on the front or obverse, has the digital photography built into the card, the signature of the citizen, number, full name (first name and surname/family name) and even the observation of “known as” (when applicable); it also has the picture decreased in the lower left corner, the flag of Costa Rica reduced in the upper left corner, plus the shield of Costa Rica, in gold print. (...) In the event that the applicant has “known as” it is only note down when there is a registry change, that is, when modifications have been made in the entry. No changes apply in the writing of the name. (...)

28 See Costa Rican Civil Code, Article 58. Supra note 21.

## KALA'S CASE

In 2014, Kala, whose registered name was a traditionally male name, requested a name change at the Heredia large claims court, which denied the petition affirming<sup>29</sup> that what she wanted to do was to “change a male name for a female one, which would run contrary to his identity ...”<sup>30</sup> Kala appealed before the Heredia Civil Tribunal, which, in April 2014, accepted the appeal and reversed the first instance ruling, ordering a name change and subsequent modification in the Civil Registry.<sup>31</sup>

The petitioner argued that in the arguments presented in the first instance, the court subsumed all identifying marks, surnames, finger prints, age, date of birth, among others, under the registered name, which is neither the only nor the definitive way to be identified socially. A name change does not affect identifying marks, surnames, finger prints, age, date of birth and other factors through which people are identified. It also cannot be suggested a) that the name “Kala” –assumed in the first ruling to be feminine because of its ‘a’ ending– necessarily or automatically implies a woman’s name, or b) that the claimant wants to change her traditionally male name for a woman’s.<sup>32</sup>

The Heredia Civil Tribunal decision guaranteed Kala’s right to change her name; supporting its decision through the principle of dignity enshrined in the Constitution and the obligation of the State,<sup>33</sup> derived from international commitments including the American Convention on Human Rights, which in Article 18 establishes that “every

person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.”<sup>34</sup>

The Tribunal decision reminds us that a given name is a protected legal right that allows important family and social links to be established, enables recognition by the State, and is an inalienable obligation, as it serves as an instrument of legal utility to distinguish one person from another.<sup>35</sup> Parts of the decision are ambiguous as, on the one hand, family and friends’ testimonials were used to support the appropriateness of the name change given that it identifies the person socially; but on the other hand, it stated it was impossible to affirm that the name Kala is a woman’s name and affirmed that the name change does not affect the individual’s identity.

Although this case guarantees the right to change one’s name, the Tribunal’s reasons reiterate that such a change does not imply the recognition of “another” identity: “the plaintiff will be identified as “Kala” among family and friends, without this affecting her identity, privacy, or gender.”<sup>36</sup> It would have been desirable instead to broaden the notion of identity to other indicators and to update the administrative processes in this regard.

29 COSTA RICA. HEREDIA CIVIL TRIBUNAL. Decision No. 8-2014, January 2014, pp. 36-360.

30 COSTA RICA. HEREDIA CIVIL TRIBUNAL. Vote 100-02- 14, N°1.

31 COSTA RICA. HEREDIA CIVIL TRIBUNAL. Vote 100-02- 14.

32 COSTA RICA. HEREDIA CIVIL TRIBUNAL. Vote 100-02- 14. Numeral 2, Sections I, II.

33 COSTA RICAN CONSTITUTION. (National Constituent Assembly, 1949) Article 48: Every person has the right to the recourse of habeas corpus to guarantee their personal freedom and integrity, and to the recourse of amparo to maintain or reestablish the enjoyment of the other rights enshrined in this Constitution, as well as those of a fundamental character established in the international instruments on human rights, applicable in the Republic. Both recourses will be of the competence of the Chamber indicated in Article 10.

34 See American Convention on Human Rights (San José, Costa Rica, 1969). Available at: [https://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm); and, Inter-American Court H.R., *Case Gelman v. Uruguay*. Judgment of February 24, 2011. Para. 127: “As regards the right to a name, recognized in Article 18 of the Convention, and also established in various other international instruments, the Court has established that it constitutes a basic and essential element of the identity of every person, without which an individual cannot be recognized by society or registered before the State. The first and last name are “essential to formally establish the link between the different family members.” This right implies, therefore, that States must ensure that the person is registered under the name chosen by his or her parents, at the time of registration, without any restriction on the right or interference with the decision to choose a name (...). The full text of the Court’s Judgment is available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_221\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_221_ing.pdf)

35 COSTA RICA. HEREDIA CIVIL TRIBUNAL. Vote 100-02- 14, citing Vote N° 6564-1994.

36 COSTA RICA. HEREDIA CIVIL TRIBUNAL. Vote 100-02- 14. Numeral 2.

## The Use of “Sexual Identity”

There is no use of the categories “sexual orientation” or “gender identity” in the ‘photo-graph regulation’. The regulation guarantees that the ID document should reflect the self-portrayal of each individual and how s/he wants to be perceived by others; that is, her or his gender expression. However, the wording of the regulation in Articles 2 and 4<sup>37</sup> refer to this right, which it coins as “sexual identity” and defines as “a sense of belonging to one sex or another.”<sup>38</sup>

At the root of this term “sexual identity” lies the consideration of ‘sex’ and ‘gender’ as synonyms. “Gender identity” refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.<sup>39</sup> The introduction of the

term “sexual identity” for “gender identity” requires more explanation as it might lead to confusion between a person’s sexual orientation with his, her or their gender identity. When this occurs, for example when a trans person is referred to as gay or lesbian or if, for example, laws prohibiting discrimination cover sexual orientation but not gender identity or vice versa, the risk of excluding certain groups from human rights protections increases.

37 COSTA RICAN SUPREME ELECTORAL TRIBUNAL. Decree 08-2010. Article 4: Duties of Officers. “The functionaries in charge of receiving and entering the data provided by those applying for an ID document, as well as those in charge of studying it to “ensure that each application is dealt with within a framework that fully respects the right to personal portrayal, and to the sexual identity of the user complying with the provisions of the Organic Law and of this regulation.” For full text, see supra note 24.

38 COSTA RICAN SUPREME ELECTORAL TRIBUNAL. Decree 08-2010, section on the definition of sexual identity: “Sexual identity refers to a sense of belonging to one sex or another (...)” (Ombudsman’s Office - File N° 1251-2009-DHR-PE)”.

39 See the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, supra note 5. In particular: 1. Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. 2. Gender identity is understood to refer to each person’s deeply felt

internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.





# Education

**Everyone has the right to education, without discrimination, including on the basis of gender identity. In international law, the right to education is enshrined in the UDHR at Article 26 and in the ICESCR at Article 13.**

**On June 30 2011, Universidad de Costa Rica was declared “a space which is free of any kind of discrimination, including discrimination on the basis of sexual orientation and gender identity...”**

Principle 16 of the Yogyakarta Principles provides that States should take all necessary measures “to ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination on the basis of sexual orientation or gender identity.”<sup>40</sup>

The Costa Rican Fundamental Education Act establishes that all the inhabitants of the Republic have a right to education and that the State is responsible for offering this in the broadest and most adequate manner.<sup>41</sup> For its part, article 4 of Law N° 1362 establishes that the Superior Council for Public Education should ensure:

“(...) [A] space for the teaching of generalities about different ethnic groups and cultures that constitute the active life of Costa Rican society, including

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40 See the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, *supra* note 5.

41 LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF COSTA RICA. Fundamental Education Act. Updated on 2001. Available at: [http://www.oei.es/quipu/costarica/Ley\\_2160.pdf](http://www.oei.es/quipu/costarica/Ley_2160.pdf)

contributions from minority groups to social development and an essentially democratic, diverse and pluralist culture.”<sup>42</sup>

The Costa Rican Ministry of Public Education and the Center for Research and Promotion of Human Rights in Central America (CIPAC) have developed a number of guidelines aimed at preventing discrimination in the educational system, including on the basis of gender identity, based on the principles of respect, equality and universality.

In general terms, the measures to prevent discrimination in the education system and ensure that education is imparted in a pluralistic manner, include:

- The implementation of the education system’s good practices manual for non-discrimination against those under the age of 18, which includes the minimum guidelines that must be followed in order for everyone to fully enjoy their human rights.<sup>43</sup>
- A comprehensive education program on sexuality, in the current training year, which incorporates a series of values and objectives that teach people among other things to: “seek the development of respectful human beings who are able to express affection, to enjoy and express

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42 See Law N° 1362 of the Superior Council for Public Education, Article 4, “The following notes cite laws which directly affect topics related to this issue.” subsection f: “The Law on the Elimination of Racial Discrimination in Educational Programs and the Media N.º 7711, 22 de October 1997”. Available at: [http://www.asamblea.go.cr/Centro\\_de\\_informacion/Servicios\\_Parlamentarios/Leyes%20actualizadas/1362.pdf](http://www.asamblea.go.cr/Centro_de_informacion/Servicios_Parlamentarios/Leyes%20actualizadas/1362.pdf)

43 See pages 6,7, 8, 9, 13 (definition of gender identity), 14 (definition of sexual identity), 15 (manifestations of discrimination). Full text of the Manual available at: <http://www.mep.go.cr/sites/default/files/page/adjuntos/manualdiscriminacion31.pdf>

sexual diversity, and to experience a more fulfilling, responsible, pleasurable sexuality that respects the rights of the sexually diverse, and makes people less likely to face discriminatory actions.”<sup>44</sup>

- Guidelines to prevent and deal with discrimination on the basis of SOGI.<sup>45</sup>
- The 2010 awareness-raising guidelines for non-discrimination on the basis of SOGI.<sup>46</sup>

In addition, a number of Costa Rican educational institutions have adopted the following policies around sexual diversity:

- The National Learning Institute (INA – Instituto Nacional de Aprendizaje) policy, in force since January 20 2013,<sup>47</sup> establishes that the gender identity of trans people studying at university or

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44 See Inter-American Juridical Committee Report on Sexual Orientation, Gender Identity and Gender Expression. 84º Regular period of sessions, March 10-14, 2014 Río de Janeiro, Brazil.

45 See Guideline No. 025-2012, articles 2 and 3. Cited in: National Report on the progress in the fight against AIDS 2011-2013. Ministry of Health, National HIV/AIDS Council –CONASIDA – and the National Monitoring and Evaluation Team. Costa Rica, 2014. Available at: [http://www.unaids.org/sites/default/files/country/documents/CRI\\_narrative\\_report\\_2014.pdf](http://www.unaids.org/sites/default/files/country/documents/CRI_narrative_report_2014.pdf)

46 See Awareness-raising guide for non-discrimination against sexual orientation, gender identity / National Women’s Institute; Central American Centre for Human Rights Research and Promotion. 1.ed. San José: National Women’s Institute; CIPAC, 2010. Cited in: LEGAL DIAGNOSIS OF THE HUMAN RIGHTS OF THE LESBIAN, GAY TRANS, BISEXUAL, POPULATION IN COSTA RICA: Sexual diversity in Central America, Promoting human rights and preventing gender related violence. Available at: <http://www.poder-judicial.go.cr/diversidadsexual/index.php/actividades?download=89:investigacion-diagnostico-juridico-sobre-derechos-humanos-de-las-poblaciones-lesbicas-gay-trans-bisexuales-de-costarica>

47 COSTA RICA. NATIONAL LEARNING INSTITUTE, (INA). Declaration of the National Learning Institute as an institution free of discrimination against sexual orientation and gender identity. February 24, 2014. Document filed at Out-right Action International.



in other institutions must be respected. The National Learning Institute also declared itself free of discrimination on the basis of SOGI.<sup>48</sup>

- On June 30 2011, *Universidad de Costa Rica* was declared “a space which is free of any kind of discrimination, including discrimination on the basis of sexual orientation and gender identity,” highlighting that according to the University’s policies it must “promote the development of an academic and work environment which is free of any kind of violence and discrimination” and that, to this end, it will “promote affirmative action strategies to deal with conditions of inequality and social exclusion, for both the students and the teaching and administrative staff.”<sup>49</sup>

- The *Universidad Nacional* declared itself free of all kinds of discrimination including discrimination on the basis of sexual orientation, gender, ethnicity and social class.<sup>50</sup>
- *Universidad Estatal a Distancia* declared itself free of all kinds of discrimination and respectful of differences,<sup>51</sup> as did the *Instituto Tecnológico de Costa Rica* and *Universidad Técnica Nacional*.

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48 Ibid.

49 SUAZO, Alexander. Reconocimiento de la gender identity por la Universidad de Costa Rica.” [Recognition of gender identity by the University of Costa Rica]. VII University Congress, Universidad de Costa Rica. San José, 2014. P. 7. Available at: <http://setimocongreso.ucr.ac.cr/sites/default/files/ponencias/vu-17.pdf>

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50 COSTA RICA. MINISTRY OF HEALTH. Annual Management Report. January 2014 – May 2014. Dr. Cesar Gamboa Peñaranda Vice Minister of Health. p. 2. Available at: <http://www.ministeriodesalud.go.cr/index.php/sobre-ministerio/informes-de-gestion/informes-de-gestion-viceministros-as/2446-informe-final-de-gestion-viceministro-cesar-gamboa-penaranda-January-2014-mayo-2014/file>

51 Ibid.



# Work

**Everyone has the right to decent and productive work, without discrimination, including on the basis of gender identity.**

In international law, the right to work is enshrined in the UDHR at Article 23 and in the ICESCR at Article 6. Principle 12 of the Yogyakarta Principles provides that States should take all necessary measures “to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration.”<sup>52</sup>

Costa Rica’s Labor Code, Law N° 2 of 1943, and its subsequent modifications, regulates Costa Ricans’ right to work. Article 8 of Law N° 2 of 1943 sets out that “no individual will be denied his or her freedom to work, s/he cannot be stopped from working in a profession, industry, or trade that s/he enjoys, as long as s/he complies with the respective legislations and regulations. Only when the individual violates the rights of third parties or society can s/he be denied the right to work through resolutions issued by the competent authorities and in accordance to the law.”<sup>53</sup>

**States should take all necessary measures ‘to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration.’**

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<sup>52</sup> See the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, *supra* note 5.

<sup>53</sup> COSTA RICAN LABOR CODE. Law N° 2, August 27, 1943 and its subsequent modifications, revised in terms of the legislative reforms that took place until 1995.

There are two laws that address discrimination at work in Costa Rica: Law No. 2 of 1943 and its subsequent modifications; and the anti-harassment and sexual harassment law in employment and education, Law N° 7476 of 1995 and its subsequent modifications. But neither law includes sexual orientation or gender identity as specific prohibited grounds of discrimination.

In its articles 618-624, Law N° 2 of 1943 prohibits all discrimination at work regardless of age, ethnic origin, gender or religion and establishes that all workers who undertake the same work will enjoy the same rights and opportunities and will not be subject to any discrimination whatsoever. It also establishes that any discrimination on the basis of age, ethnic origin, gender or religion that harms the worker can be reported before the work tribunals or sanctioned, and any employer that can be proven to have discriminated against a worker in some way, will also be reported.

The Legislative Assembly noted that the enumeration of specific grounds of discrimination in the Labor Code was limited and that other protected characteristics, such as sexual orientation, were missing. Because of this, in 2008, the Legislative Assembly proposed a Bill that intended to reform articles 618-624 of the Labor Code “to extend the express prohibition of discrimination and the consequent protection for those affected by those acts based on such reasons, equally contrary to the human dignity.”<sup>54</sup> After four years, this Bill expired, but the new labor law reforms

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54 COSTA RICA. LEGISLATIVE BRANCH. Proposed legislation (Bill) to modified Articles 618-624 of the Labor Code. 3 April 2008. Available at: [http://www.imprenal.go.cr/pub/2008/06/30/ALCA26\\_30\\_06\\_2008.html](http://www.imprenal.go.cr/pub/2008/06/30/ALCA26_30_06_2008.html)

embraced these changes, though including only sexual orientation and not gender identity. The Labor Procedure Reform was approved on December 9, 2015 in the Legislative Assembly<sup>55</sup> and on January 25, 2016 published in the *Journal La Gaceta (The Gazette)* the LEGISLATIVE DECREE N. ° 9343: LABOR PROCEDURE REFORM,<sup>56</sup> which establishes in its EIGHTH TITLE: PROHIBITION TO DISCRIMINATE, in its articles 404 and 406.<sup>57</sup> This reform will come into force by mid 2017.

The anti-harassment and sexual harassment law in employment and education, Law N° 7476 of 1995 and its subsequent modifications,<sup>58</sup> is based on the constitutional principles of respect for freedom and human life, the right to work and the principle of equality before the law. Its fundamental goals are to prevent, prohibit and sanction sexual harassment as a discriminatory practice. Modifications to the law did not include considerations of SOGI.

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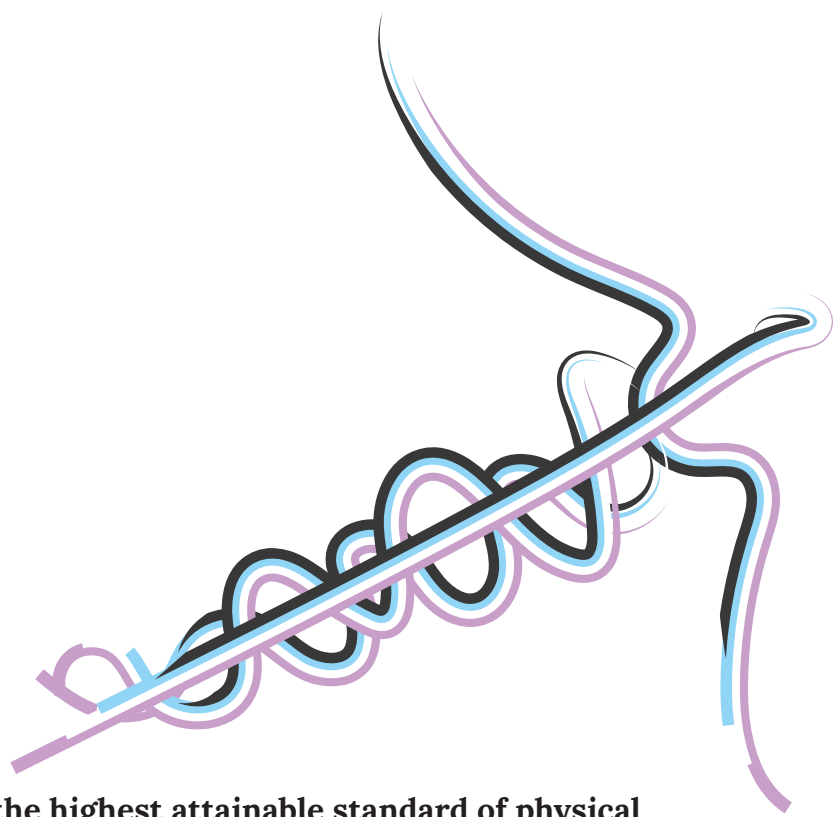
55 For additional information on the Labor Procedure Reform see: <http://www.procesal-laboral.go.cr/>

56 COSTA RICA. LEGISLATIVE ASSEMBLY. Legislative Decree No. 9343. Labor Procedure Reform. Available at: <http://rpl.presidencia.go.cr/wp-content/uploads/2016/01/REFORMA-PROCESAL-LABORAL-LEY-9343-25Ene16.pdf>

57 See Article 404: Any discrimination in the workplace based on age, ethnicity, gender, religion, race, sexual orientation, civil/marital status, political opinion, national ancestry, social origin, filiation, disability, syndical affiliation, economic status or any other similar form of discrimination is prohibited. Article 406: the dismissal of workers based on any of the reasons indicated in article 404 is prohibited.

58 See COSTA RICA. Anti-harassment and sexual harassment law in employment and education. Law n.° 7476 of February 3, 1995. Published in the gazette n.° 45 of March d, 1995. Available at: <http://www.tse.go.cr/pdf/normativa/ley-contrahostigamientosexual.pdf>

# Health



**Everyone has the right to the highest attainable standard of physical and mental health, including sexual and reproductive health, without discrimination, including on the basis of gender identity.**

In international law, the right to health is referenced in the UDHR at Article 25 as part of the right to an adequate standard of living, and enshrined in the ICESCR at Article 12. Principle 17 of the Yogyakarta Principles provides detailed guidance on the right to health without discrimination on the basis of SOGI, including that States should “[f]acilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support.”<sup>59</sup>

**[The Costa Rican State] must promote... the right to an integrated sexuality that ... transcends the paradigm of a biological approach—based on caring for health and focusing on genitality—moving towards an integral approach, based on the promotion of the person, focusing on the search for relationships of equality, respect and mutual care...**

In Costa Rica, the General Health Law 5395,<sup>60</sup> the National

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<sup>59</sup> See the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, *supra* note 5.

<sup>60</sup> COSTA RICA. LEGISLATIVE ASSEMBLY OF THE REPUBLIC. GENERAL HEALTH LAW N° 5395/1999, Book I: *De los derechos y deberes de los individuos concernientes a su salud personal y de las restricciones a que quedan sujetas todas las personas en consideración a la salud de terceros y de la conservación y mejoramiento del medio ambiente. TÍTULO I: Derechos y deberes concernientes a la salud personal. (The rights and duties of individuals concerning their personal health and limitations to which all persons are subject in consideration of the health of third parties and the improvement of the environment. TITLE I: Rights and duties concerning personal health).*

Sexuality Policy 2010–2021,<sup>61</sup> and the National Mental Health Policy 2011–2021<sup>62</sup> focus on or include consideration of SOGI. The Costa Rican Social Security Institute<sup>63</sup> is in charge of implementing these and other laws and policies to limit the obstacles to the full enjoyment of people’s right to health.

## General Health Law

The General Health Law<sup>64</sup> issued by the Legislative Assembly in 1999, enshrines Costa Ricans’ right to information, guidance and attention to maintain their personal health and that of their families in terms of “hygiene, diet, psychological guidance, mental hygiene, sexual education, transmissible diseases, family planning, early detection of diseases and on the practices and use of special technical equipment.”<sup>65</sup>

Costa Rica’s Social Security Institute is in charge of implementing the General Health Law and policies created by the Minister of Health. In its 2014 management report, *Reporte de gestión*, the Vice-Minister of Health mentioned the policy advanced by the government to regulate visits to health centers and prevent

discrimination in any way, including political and religious discrimination or discrimination on the basis of sexual orientation, color, sex or the economic class of any visitor.<sup>66</sup>

## National Sexuality Policy

Sexual and reproductive rights, gender equality and the recognition of diversity (age, ethnic, sexual, health condition or disability among others) are central to the National Sexuality Policy 2010–2021. The idea is for the “Costa Rican State to guarantee and respect the access to and exercise of the right to a sexuality that is safe, informed, and co-responsible for all those who inhabit the country, as an integrated part of the human right to health.” It must also promote and guarantee “the right to an integrated sexuality that includes its various determinants and that transcends the paradigm of a biological approach—based on caring for health and focusing on genitality—moving towards an integral approach, based on the promotion of the person, focusing on the search for relationships of equality, respect and mutual care.”<sup>67</sup>

The National Sexuality Policy 2010–2021 is part of a broader general framework, through which the Health Ministry can bring other areas of government to account for their actions, and broaden its radius of action, for example, to rural areas and to the design of technical strategies such as drafting local public policies,

61 COSTA RICA. MINISTRY OF HEALTH. National Sexuality Policy 2010–2021: “Marco Conceptual y normativa de la Política de sexualidad” [Conceptual and normative framework of the sexual policy]. 1st ed. San José de Costa Rica, 2011. Available at: <http://www.ministeriodesalud.go.cr/index.php/sobre-ministerio/politicas-y-planos-en-salud/politicas-en-salud/1039-politica-nacional-de-sexualidad-2010-2021-par-te-ii/file> (Retrieved on September 25, 2015).

62 COSTA RICA. MINISTRY OF HEALTH. National mental health policy 2012–2021: “De la atención hospitalaria a la atención comunitaria” [From hospital care to community care]. 1st ed. San José de Costa Rica, 2012. Available at: [http://www.paho.org/cor/index.php?gid=194&option=com\\_docman&task=doc\\_view](http://www.paho.org/cor/index.php?gid=194&option=com_docman&task=doc_view). (Retrieved on September 21, 2015).

63 For additional information on the Costa Rican Social Security Institute see: <http://www.ccss.sa.cr/>

64 See supra note 60.

65 See General Health Law N° 5395/1999, Article 10.

66 COSTA RICA. MINISTRY OF HEALTH. Annual Management Report January 2014 – May 2014. Dr. César Gamboa Peñaranda. P. 9. Available at: <https://www.ministeriodesalud.go.cr/index.php/sobre-ministerio/informes-de-gestion/informes-de-gestion-viceministros-as/2446-informe-final-de-gestion-viceministro-cesar-gamboa-penaranda-enero-2014-mayo-2014/file>

67 COSTA RICA. MINISTRY OF HEALTH. National Sexuality Policy 2010–2021. See supra note 61.



dissemination of legislation and services. Among other benefits, the policy has promoted access to lubricants and male and female condoms.

## National Mental Health Policy

The fundamental goal of the National Mental Health Policy 2011-2021 is to develop a mental health model that guarantees the population's right to mental health through intersectorial and interinstitutional action, with a community focus, in order to improve quality and enjoyment of life throughout people's life cycles.<sup>68</sup> According to the Health Ministry, "the policy sets out priorities in the communities, advocates for people's rights, strengthens the process of the psychiatric reform initiated in the last century, while support[ing] services and social networks' capacity for resolving problems improves."<sup>69</sup>

One of the main topics that it deals with is the consolidation of mechanisms of protection, prevention and treatment of gender related violence, domestic violence, sexual abuse, workplace harassment, discrimination on the basis of sexual orientation, creed, political affiliation, ethnic origin, physical or mental disability. The main issues dealt with by this policy include human rights, gender and diversity (including gender identity), integration, social inclusion, social participation and sustainable human development; and the policy emphasizes the principles of equity, universality, solidarity, substantive equality, quality, warmth and autonomy.

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68 COSTA RICA. MINISTRY OF HEALTH. National Mental Health Policy 2012-2021. San José, Costa Rica, 2012. Available at: <http://www.bvs.sa.cr/saludmental/politicasaludmental.pdf>

69 CASTILLO RAMÍREZ, Sissy M and GÓLCHEZ VALVERDE, F. Presentation of the National Mental Health Policy in Costa Rica. June, 2012. PPT Format - Slide 6. Available at: [http://onarhus.ministeriodesalud.go.cr/sites/observatorio\\_cr/files/documentos/ORHS\\_informe\\_plan\\_salud\\_mental.ppt](http://onarhus.ministeriodesalud.go.cr/sites/observatorio_cr/files/documentos/ORHS_informe_plan_salud_mental.ppt).

The policy considers diversity to be about the recognition of the specificity of people's needs: Respect for diversity allows a comprehensive assessment of a person regardless of his or her sex, age, ethnic background, nationality, sexual orientation and gender identity, among other characteristics, thus contributing to the conservation of his or her mental health.<sup>70</sup>

In addition, among its annexes, the policy considers the Corobicí Declaration of the Central America Psychiatric Association in San José, according to which it is not possible for a person to be mentally healthy when her or his human rights are being violated due to her or his sexual orientation, ethnic origin, religion, gender, socio-economic or political status, among others.<sup>71</sup>

The policy defines mental health and identifies key aspects of people's development, also covering the needs and rights of trans people. The policy sheds light on "the government's willingness to develop policies that provide the Costa Rican population with a comprehensive coverage of mental health, considering aspects as important as disease prevention, attention, treatment and rehabilitation of people with mental disorders in the community arena in order to overcome the paradigm of biological-hospital attention."<sup>72</sup>

As affirmed by Edda Quirós Rodríguez, a

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70 National Mental Health Policy 2012-2021. P. 44. See supra note 62.

71 Declaration of Corobicí Central American Psychiatric Association San José, Costa Rica 2011. ASOCOPSI, Sunday, April 17, 2011. Annex 2 of the National Mental Health Policy 2012-2021. See supra note 62.

72 MONGE MORA, M and SANCHO MENA, B. The situation of the right to gender identity in the trans population in Costa Rica. Available at: <http://www.mulabi.org/informes%20finales/derecho%20al%20nombre.pdf>



based on sexual orientation or gender identity in health care. These policy strategies are aimed at:<sup>80</sup>

- Promote non-discrimination in health care services based on SOGI and eradication of homophobia/lesbophobia/transphobia.
- Promote a culture of self-care and corresponsibility in building the health of LGBTI people.
- Strengthen the comprehensive health services, to make them timely, secure and inclusive and responsive to the needs of LGBTI people throughout the cycle of life.
- Promote the participation of LGBTI people in the protection and monitoring of their health rights.
- Strengthen prevention of, and comprehensive care related to, domestic violence, bullying and sexual violence toward LGBTI people.

## Implementation

Despite the broad legal and policy framework supporting trans people's enjoyment of the right to health, they still face cultural and structural problems in the medical system, especially in terms of their transition.

When we speak about the right to health for trans people, we refer both to supporting the physical and mental processes implied in the transition, and to trans people's access to general health services. While the former includes physical transformations such as surgery or hormonal treatments – should the person decide to choose this path – the latter deals with adequate information, available

resources and the absence of prejudice in health care for trans people.

The path people may choose to follow when their internal experience of their body does not coincide with the sex they were assigned at birth is what we understand by the term “transition”. Such a path may lead to surgical, medical or other modification of the body, provided that whatever is carried out or not carried out is guaranteed as the person's free decision. The enjoyment of the right to a gender identity is what can help guarantee full access to all other rights.

As affirmed by the Ombudsman's Office, which receives and investigates human rights complaints, health personnel are not trained enough on gender identity and care protocols, in particular in health centers.<sup>81</sup> The Ombudsman's Office insists that there continue to be failures in the full guarantee of the rights of trans people, even when national policies point in the opposite direction. Trans people face, on the one hand, problems related to access to information regarding the available resources and guarantees through which they could and should have access to a health system and, on the other hand, they face ignorance and inadequacies in a system that does not include comprehensive and intersectorial care programs with specialized medical personnel and which is still rife with social prejudices.<sup>82</sup>

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81 COSTA RICA. OMBUDSMAN'S OFFICE. National Dialogue on HIV and Rights, 2012. Available at: [http://www.asamblea.go.cr/Centro\\_de\\_informacion/Secretaria\\_Directorio/Informe%20anual%2020112012%20de%20la%20Defensora%20de%20los%20Habi/Informe%20anual%202013-2014%20de%20la%20Defensora%20C3%ADa%20de%20los%20Habitantes/Informe%20especial%20%28Dialogo%20Nacional%20sobre%20VIH%20y%20Derecho.%20Costa%20Rica%202012%29.pdf](http://www.asamblea.go.cr/Centro_de_informacion/Secretaria_Directorio/Informe%20anual%2020112012%20de%20la%20Defensora%20de%20los%20Habi/Informe%20anual%202013-2014%20de%20la%20Defensora%20C3%ADa%20de%20los%20Habitantes/Informe%20especial%20%28Dialogo%20Nacional%20sobre%20VIH%20y%20Derecho.%20Costa%20Rica%202012%29.pdf) (Retrieved on 26 September 2015).

82 GARCÍA FERCHAL, Sonia. Costa Rica; Collective situation

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80 Íbid. p. 88.

The Costa Rican Social Security Institute, in charge of implementing health policies, does not have a comprehensive health care plan or a multiprofessional team to deal with the specific needs of trans people in transition, or even to provide general health care for this population. Despite the protections against discrimination established in the international and national legal framework, trans people regularly have to deal with the ignorance of public servants, and worse still, they have to deal with abuse, negligence or hostility in service provision.

Two key problems of the health system are a) the insufficient diffusion of standards, and b) the reproduction of the binary gender system in medical schools. Something as basic as a Pap smear becomes complicated and tense if it has to be carried out on a trans man, and something as complex as hormonal treatments are either inadequate or not offered at all, putting trans people at high risk because many resort to the black market in search of alternatives, clandestine health care and non-conventional medical practices that are largely less expensive and faster.

With regard to transition, trans people face obstacles accessing gender-affirming processes such as:

- Access to sex change surgery;
- Access to hormone therapy processes;
- The lack of informed material and human resources to accompany the processes.

Trans women do not have access to gender affirming processes through the state's medical system, surgery in particular, in the country, but

they have them anyway, either on the black market or, if they have the financial means, in other countries with public institutions that undertake such surgery such as Spain, Ecuador or Cuba.<sup>83</sup> Trans men report that surgeons are reluctant to undertake mastectomies.<sup>84</sup> Faced with such a difficulty, they opt to strap their breasts, knowing that this could lead to skin damage, possible tumors, and wounds, as well as the risk of chafing in the summer or even breaking ribs as a result of very tight strapping.<sup>85</sup>

Hormonal treatments for trans men and women are difficult to access if the person does not have the adequate financial resources.<sup>86</sup> This makes self-medication a common practice – one person takes medication that works, this information spreads from person to person, with no medical oversight whatsoever. Many begin hormone therapy with medical supervision, but because of high costs are then forced to continue on their own by simply repeating the initial treatment.

The same inadequacy found in the provision of general health services can also be found in

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83 See Nathalia Rojas Zúñiga, "Interview with Natasha Jiménez", *Semanario Universidad*, July 6, 2011. Available at: <http://pruebas.candres.com/component/content/article/1257-Pa%C3%ADs/4083-desproteccion-legal-margina-a-poblaciones-trans.html> (Retrieved on September 28, 2015)

84 Vincenzo (40 year-old trans activist), Communication with OutRight Action International, October 2014.

85 "I strap myself and it is very painful. One day when I had to stay strapped for a long time, I came out in a rash and blisters because of the heat. I know it is dangerous to do this, you can break a rib, perforate an organ, it makes it difficult to breathe, I couldn't walk fast, I couldn't breathe. But it is necessary." Tomás (psychology student), communication with OutRight Action International, October 2014.

86 Wendy Vanessa Sánchez Artavia, Ciruelas, Alajuela, Costa Rica: "@ccssdecostarica Provide me with the hormone treatment I need." Available at: <https://www.change.org/p/ccssdecostarica-brindar-tratamiento-de-hormonas-para-wendy-s%C3%A1nchez>. (Retrieved on September 26, 2015).

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of LGTB, Spanish Refugee Aid Commission (CEAR), September 2014, p. 19, Available at: [www.pear.es](http://www.pear.es) (Retrieved on September 26, 2015)



the provision of mental health care. Transition processes and the pressures of dealing with social prejudices on a daily basis, the loss of family for people who are not accepted, and the difficulties in finding decent work, for example, cause high levels of stress for trans people. However, Costa Rica does not have a specialized mental health care program for trans people, nor are trans issues included in the training in psychology programs.

### The HIV/AIDS Umbrella

Although the Costa Rican State has concerned itself with reducing the stigma related to SOGI, it has done so under the umbrella of HIV/AIDS.<sup>87</sup> What LGBTI activists are asking for is a distinction to be made between general HIV care on the one hand, and comprehensive health-care policies for trans people on the other, as a first step to reducing the stigma in both areas. The problem becomes evident when, for example, trans women engaged in sex work are dealt with as a health problem insofar as HIV infection. According to Natasha Jiménez, the Executive Director of Mulabi, the reason why there is no way to fight the stigma is that only an exclusively HIV/AIDS-based health care program for trans women exists, and especially for those who are sex workers.<sup>88</sup> In contrast, the complaints made to the Ombudsman's Office have to do with the general topic of access to services, which, as described above, are not offered, difficult to access, or inadequate to meet the needs of trans people.<sup>89</sup> Health professionals tend not to know

about the specific needs of the trans or intersex populations, and the patients often have to deal with discrimination, delays and ridicule.<sup>90</sup>

With regard to HIV/AIDS and other sexually transmitted diseases, trans women have raised concerns about prevention strategies. Despite the existence of policies providing for universal access to condoms, the complaints made to the Ombudsman's Office tell a different story.<sup>91</sup> The Transvida Foundation, which works with around 200 trans women involved in sex work in San José, reports that the Costa Rican Social Security Institute suspended the sexually transmitted disease surveillance consultation service and now only deals with people who have health insurance. Moreover, the authorities do not distribute condoms and it is only thanks to an NGO, which donates 5,000 of them a month, that these trans women can access some sort of protection.<sup>92</sup> These shortcomings are a public health problem, and immediate and efficient action is urgently required to address them.

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90 See International Lesbian, Gay, Bisexual, Trans & Intersex Association (ILGA), Interview with Natasha Jiménez. Available at: [http://trans\\_esp.ilga.org/trans/bienvenidos\\_a\\_la\\_secretaria\\_trans\\_de\\_ilga/zona\\_trans/entrevistas/entrevista\\_a\\_natasha\\_jimenez](http://trans_esp.ilga.org/trans/bienvenidos_a_la_secretaria_trans_de_ilga/zona_trans/entrevistas/entrevista_a_natasha_jimenez) (Retrieved on 26 September 2015).

91 Carlos Alfaro Villegas, representative of the BITRANS Association affirms, "that on 30 November he went to the AIDS Control Department at the Moreno Cañas Clinic to collect the condoms for the months of November and December, to undertake the work the organization does on the streets and they were denied him because the internal policies of the Costa Rican Social Security Institute (CCSS) has changed. The organization has not been notified of this."

92 ÁVALOS R., Ángela. Trabajadores del sexo carecen de control de males venéreos [Sex workers lack control of venereal diseases]. La Nación, June 16, 2015. Available at: [http://www.nacion.com/nacional/salud-publica/Trabajadores-carecen-control-males-venereos\\_0\\_1493650665.html?print=1](http://www.nacion.com/nacional/salud-publica/Trabajadores-carecen-control-males-venereos_0_1493650665.html?print=1) (Retrieved on September 25, 2015)

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87 Costa Rican Ministry of Health. 2014 Annual management report. See supra note 66.

88 Communication with OutRight Action International, December 2014.

89 COSTA RICA. OMBUDSMAN'S OFFICE. National Dialogue on HIV and Rights, 2012. p. 5. See supra note 81.





# Recommendations

**In conclusion, as this report has shown, while Costa Rica enjoys a strong human rights framework – based on its international obligations and human rights protections in its Constitution – there is still significant room for progress in developing and implementing a legal and public policy framework that protects the human rights of transgender people.**

Mulabi and Outright Action International make the following recommendations to the Costa Rican authorities, to improve respect for the human rights of trans people in the areas considered in this report:

## Human Rights Framework

- Provide explicit legal protection against discrimination on grounds of gender identity and expression in all areas;
- Establish a mixed observatory made up of delegates from the executive branch, the Ombudsman's Office and civil society, that ensures the design and implementation by executive institutions of plans pursuant to Executive Decree 38999 to eliminate discrimination on the basis of SOGI against those who work for the executive branch and its service users;
- Take steps to raise public awareness of transgender identities and the discrimination experienced by transgender people;

## Legal Gender Recognition

- Take all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity;
- Following civil society organizations' proposals for the same,<sup>93</sup> draft and enact a law that guarantees legal gender recognition – the right to rectify one's name and gender and make this coincide with a self image and gender identity with which one identifies. The law should guarantee a process that is administrative, quick, transparent and accessible, and one that does not require total or partial genital reassignment, hormonal therapies, or any other medical or psychological treatment, and without infringements of other human rights. If the State wants to be authoritative, it has to differentiate the registered sex assigned at birth from the gender experienced individually and expressed socially. They may or may not coincide, but they are not the same;
- Provide clear guidance and training to all State employees, and in particular front line service providers, on understanding and distinguishing between sexual orientation and gender identity, and on ending discrimination based on SOGI;

## Education

- Incorporate the topics of gender identity and gender expression in the Education Ministry's comprehensive guidelines aimed at preventing discrimination in the education system;
- Borrowing from Principle 16 of the Yogyakarta Principles, continue to take all necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination on the basis of gender identity;

## Work

- Generate State policies aimed at promoting employment for the trans population and encourage private companies to hire them.
- Borrowing from Principle 12 of the Yogyakarta Principles, take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of gender identity in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration;

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93 MULABI. The situation of the right to gender identity in the trans population in Costa Rica (Costa Rica: Latin American Space for Sexuality and Rights, 2012) <http://www.mulabi.org/informes%20finales/derecho%20al%20nombre.pdf> (Retrieved on September 24, 2015)

## Health

- Ensure the effectiveness of the General Health Law by regulating the chapter on sexual and reproductive rights, including the recommendations in the national development plan, as public policies and not as technical health guidelines. Above all, this should involve working with civil society organizations in order to identify the problems and inconsistencies between the policies and the daily experiences of trans people;
- Identify the specific health care needs of the trans population, including mental health, and oversee the implementation of recommendations and norms for this health care by creating a special unit in the Costa Rican Social Security Institute to guide public servants in such cases;
- Overcome the obstacles faced by trans men and trans women in terms of safe transitioning, by guaranteeing the necessary financial and human resources for access to gender reaffirming processes. The State should also invest in training for health care professionals to ensure their capacity to deal with such processes;
- Implement comprehensive mental health plans to include respect for and non-pathologization of trans identities; and
- Incorporate trans health needs into health sector related study programs including at medical schools. Borrowing from Principle 17 of the Yogyakarta Principles, adopt the policies, and programs of education and training, necessary to enable persons working in the healthcare sector to deliver the highest attainable standard of healthcare to all persons, with full respect for each person's gender identity.



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