

GUIDELINES FOR THE IMPLEMENTATION OF ADVISORY OPINION N.24 ON LEGAL RECOGNITION OF GENDER IDENTITY

IMPLICATIONS OF THE DECISION OF THE
INTER-AMERICAN COURT ON HUMAN RIGHTS FOR REGISTRIES OF
IDENTIFICATION AND CIVIL STATUS



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ACRONYMS GLOSSARY ACKNOWLEDGMENTS

I. ACRONYMS

AECID	Spanish Agency for International Development Cooperation
IACHR	Inter-American Commission on Human Rights
CLARCIEV	Latin American and Caribbean Council for Civil Registration, Identity and Vital Statistics National (Mexico)
CONAFREC	Council of Civil Registry Officials
CURP	Unique Population Registry Code (Mexico)
DIGERCIC	General Directorate for Civil Registration, Identification and Certification (Ecuador)
GRIAS	Identity Restitution and Social Support Department (Peru)
I/A Court HR	Inter-American Court of Human Rights
ICAO	International Civil Aviation Organization
MECIGEP	Inter-American Cooperation Mechanism for Effective Public Management
OAS	Organization of American States
OC-24/17	Advisory Opinion No. 24 (2017) of the Inter-American Court of Human Rights
PUICA	Universal Civil Identity Program in the Americas
RENAP	National Registry of Persons (Guatemala)
RENAPER	National Registry of Persons (Argentina)
RENAPO	General Directorate of the National Registry of Population and Identity (Mexico)
RENIEC	National Registry of Identification and Civil Status (Peru)
SERECÍ	Civic Registry Service (Bolivia)
USD	United States Dollars

II. GLOSSARY

The terms included in this section have been taken mostly from the glossary included in Advisory Opinion 24/17 (OC-24/17) of the Inter-American Court of Human Rights (I/A Court HR). They are not presented in alphabetical order, but in an order that makes it easier to understand the concepts in relation to each other.

Sex/gender binary system: Dominant social and cultural model in western culture which considers gender and sex as consisting of two, and only two, rigid categories, namely male/man and female/woman. Such a system or model excludes those who do not fit within the two categories (such as transsexual or intersex persons).

Cisnormativity: Idea or expectation according to which all people are cisgender, that is, those who were assigned the male sex at birth always grow up to be male and those who were assigned the female sex at birth always grow up to be women.

Heteronormativity: Cultural bias in favor of heterosexual relationships, which are considered normal, natural, and ideal and are preferred over same-sex or same-gender relationships. This concept appeals to legal, religious, social, and cultural rules that require individuals to act according to dominant and prevailing heterosexual patterns.

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Sex: Strictly speaking, the word "sex" refers to the biological characteristics that define the spectrum of humans as females and males, or a biological construct referring to the genetic, hormonal, anatomical and physiological characteristics based on which an individual is classified at birth as either male or female. In that sense, since this term only establishes subdivisions between men and women, it does not recognize the existence of other categories that do not fit within the female/male binary system.

Sex assigned at birth: This idea transcends the concept of sex as male or female and is associated with the determination of sex as a social construct. Sex assignment is not an innate biological fact; rather, sex is assigned at birth based on the perception others have of the genitalia. Most individuals are easily classified, but some do not fit the female/male binary system.

Gender: This refers to socially constructed identities, attributes and roles for women and men and to the social and cultural meaning attributed to these biological differences.

Gender identity: Gender identity is the internal and individual experience of gender as felt by person, which may or may not correspond to the sex assigned at the time of birth. It includes the personal experience of the body (which may or may not involve the modification of the appearance or bodily function through medical, surgical or other means, if freely chosen) and other expressions

of gender, including dress, speech and mannerisms. Gender identity is a broad concept that creates space for self-identification, and refers to the experience of one's own gender. Thus, gender identity and its expression also take many forms: some people do not identify as either male or female, or identify as both.

Gender expression: It is understood as the outward manifestation of a person's gender, through their physical appearance, which may include dress, hairstyle or the use of cosmetics, or through mannerisms, speech, personal behavior or social interaction, and names or personal references, among others. A person's gender expression may or may not correspond to their self-perceived gender identity.

Trans person or trans*: When a person's gender identity or expression is different from that typically associated with the sex assigned at birth. Trans people build their identity regardless of medical treatment or surgical interventions. The term “trans” is an umbrella term used to describe the different variants of gender identity, whose common denominator is the non-conformity between the sex assigned at birth and the gender identity that has been traditionally assigned to it. A trans person can identify with the concepts of man, woman, trans man, trans woman and non-binary person, or with other terms such as *hijra*, third gender, two-spirits, transvestite, *fa'afafine*, queer, *transpinoy*, *muxé*, *maria* and *meti*.

Transsexual person: Transsexual persons feel and perceive themselves as belonging to a gender that is not the one socially and culturally assigned to their biological sex and who opt to have medical treatment—hormonal, surgical or both—to adapt their physical-biological appearance to their mental, spiritual and social sense of self.

Queer person or person with a non-binary gender identity: This is an umbrella term for individuals whose gender identity is not included in or transcends the male/female binary system.

Persons with non-normative gender identities: Term used to refer to persons who do not agree with and do not follow social ideas or stereotypes about how they should act or express themselves based on the sex assigned to them at birth.

Cisgender person: When the gender identity of the person corresponds with the sex assigned at birth.

Sexual orientation: This refers to the emotional, affectional, and sexual attraction to individuals of a different gender or the same gender, or more than one gender, as well as intimate and/or sexual relations with certain individuals. Sexual orientation is a broad concept that allows for self-identification. Additionally, sexual orientation can range along a continuum, including exclusive and non-exclusive attraction to the same or the opposite sex.

Sex characteristics: This concept refers to the wide range of presentations of the human body, demystifying the existence of a standard body and eliminating the view that some presentations should be classified as ambiguous.

Intersex: All those situations in which an individual's sexual anatomy does not physically conform to the culturally defined standards for the female or male body. An intersex person is born with a sexual anatomy, reproductive organs, or chromosomal patterns that do not fit the typical definitions of male or female. This may be apparent at birth or become apparent later in life. An intersex person may identify as male or female or as neither. Intersexuality is not related to sexual orientation or gender identity: intersex persons experience the same range of sexual orientations and gender identities as those who are non-intersex.

LGBTI: Lesbian, Gay, Bisexual, Trans or Transgender, and Intersex. The acronym LGBTI is used to describe diverse groups of persons who do not conform to conventional or traditional notions of male and female gender roles. Regarding this specific acronym, the terminology relating to these human groups is not fixed and evolves rapidly, and many other terms exist including asexual people, queers, transvestites and transsexuals, among others. As well, different cultures may use other terms to describe individuals of the same sex who have sexual relations with each other and persons who self-identify or exhibit non-binary gender identities (such as, but not limited to, *hijra*, *meti*, *lala*, *skeesana*, *motsoalle*, *mithli*, *kuchu*, *kawein*, queer, *muxé*, *fa'afafine*, *fakaleiti*, *hamjensgara* and Two-spirit).

I. INTRODUCTION

1.

INTRODUCTION

- 1 The American continent is the most violent region for people with non-normative gender identities in the world. These cycles of violence, present in all the areas of trans people's lives, are interspersed with high levels of discrimination and stigmatization. Furthermore, they result in lack of access to their civil, political, economic, social, cultural, and environmental rights.
- 2 Persons with non-normative gender identities do not identify with the name and sex assigned to them at birth. However, this assignment determines the social expectations that surround their existence. These social expectations, strongly influenced by a cisnormative, heteronormative and binary worldview, translate into a set of barriers that are imposed by public and private institutions, turning the trans world into an uncertain, insecure and, at times, uninhabitable space.
- 3 Aware of the cycles of discrimination and violence faced by persons with non-normative gender identities in the region and their lack of access to identity documents matching their self-perceived gender identity, the Universal Civil Identity Program in the Americas (PUICA) implemented the project "Strengthening the access of civil registry institutions to the knowledge and good practices for the recognition of the self-perceived gender identity in identity documents," with the financial support of AECID.
- 4 This project aims to help strengthen the region's civil registration and identification institutions in two ways. First, it aims to enhance the knowledge of Inter-American and international human rights standards related to the right to the recognition of self-perceived gender identity. Second, it seeks to provide access to reference practices, individual stories, experiences, and recommendations from their peers. In this way, and from PUICA's perspective, OAS member states will be better equipped to lead changes in their internal policies, processes, and procedures to promote the legal recognition of gender identity in their jurisdictions.
- 5 As a fundamental right, the right to identity is relevant not only in itself but also as a necessary condition for the access to and exercise of the other rights. Therefore, the lack of regulatory frameworks and institutional practices that allow and promote the recognition of gender identity, an essential component of the right to identity, may result in the virtual denial of the rights of populations with non-normative gender identities.
- 6 As part of the project's activities, and jointly with Synergía—Initiatives for Human Rights (a regional organization that defends and promotes the human rights of LGBTI people), PUICA developed

two documents that aim to facilitate the understanding of the contents of OC-24/17. Likewise, reference practices in matters of civil registration and identification that are developed throughout the continent were documented considering the standards included in the I/A Court HR resolution.

- 7 On the one hand, the document entitled “Overview of the legal recognition of gender identity in the Americas” provides an overview of the recognition of gender identity in the region by reviewing legislative frameworks, judicial instruments and the processes of the civil registry and identification institutions. The publication is expected to facilitate and promote knowledge and experience sharing among the States in the region. It also seeks to provide a tool for civil registries to strengthen their role in guaranteeing rights, including the recognition of self-perceived gender identity.
- 8 This document, entitled “Guidelines for the implementation of Advisory Opinion No. 24 on the legal recognition of gender identity” is a reference tool for those civil registries in the region that are mainstreaming a human rights and gender identity perspective in its various internal processes, functions, and mandates.
- 9 OC-24/17 of the I/A Court HR is the most avant-garde resolution regarding the rights of LGBTI persons globally. Thus, its proper understanding is mandatory for the civil registration and identification institutions in the continent. This is crucial, because civil registries are not only in charge of registering and certifying people's vital facts (including birth registration) but can also have the power to rectify the information in registry records. As unequivocal proofs of identity that allow persons to fully access their rights, personal identification documents are fundamental elements for the development of social, political, economic and cultural life of the individual. Therefore, OC-24/17 must also be understood by identification institutions.
- 10 This publication aims to make the implications of the standards set by the Inter-American Court available to the region's civil registry and identification institutions in an accessible manner. It specifically focuses on the standards applicable to the legal recognition of gender identity in the interests of guaranteeing the full satisfaction of this right.
- 11 In turn and within international cooperation, it aims to provide useful input for the Latin American and Caribbean Council for Civil Registration, Identity and Vital Statistics (CLARCIEV), established in 2005 as an organization that brings together civil registration institutions from the continent to provide a platform to share experiences and good practices on the registration and identification of persons. Since 2018, CLARCIEV's Technical Committee for the Management of Regulations, Data Protection and Diversity has promoted the exchange of experiences and good practices for the

development of policies and strategies to guarantee the full access to the right to identity, considering and respecting diversity, including those practices relating to the recognition of gender identity.

- 12 The document consists of nine chapters, including an introduction. The second chapter includes a brief explanation of the methodology used to design and prepare the guide. Chapters III, IV and V elaborate on the recognition of gender identity as a constituent element of the right to identity, its connection with other rights and its implications for registration and identification purposes.
- 13 The sixth chapter presents OC-24/17 of the Inter-American Court on the right to recognition of gender identity in a simplified and organized manner, seeking to translate the content of the resolution into the language commonly used by civil registration and identification institutions in the region. Chapter VII raises a number of premises on the mandatory nature of OC-24/17 for OAS Member States.
- 14 Chapter VIII introduces a checklist that may be used as a learning exercise to contrast regional practices with the standards included in the advisory opinion. Finally, Chapter IX presents a selection of practices relating to the legal recognition of gender identity that may serve as reference to develop alternatives that meet the Inter-American standards.

II.METHODOLOGY

2. METHODOLOGY

- 15 Advisory Opinion OC-24/17 of the Inter-American Court was thoroughly analyzed to prepare this document. We contrasted it with the legal frameworks and practices implemented in various civil registration institutions in the region to identify the different ways in which they have either partially or fully met the requirements established by the Inter-American Court regarding the legal recognition of gender identity.
- 16 The final part of the document includes a checklist that is intended to serve as a teaching tool for civil registry officials in the internal assessment of their legislation and regulations in terms of their acceptability and respect for the standards of the Inter-American System.
- 17 Interviews were conducted with public officials from various civil registries across the continent to access and validate the information on the jurisdictions considered in this joint study developed by Synergía and PUICA. It should also be noted that this document has been prepared considering other diagnoses and reports from international human rights organizations, as well as the views of civil society organizations and social movements of trans persons and those who represent them.

III. THE RIGHT TO IDENTITY AND THE ROLE OF CIVIL REGISTRIES IN THE REGION AS GUARANTORS OF HUMAN RIGHTS

3.

THE RIGHT TO IDENTITY AND THE ROLE OF CIVIL REGISTRIES IN THE REGION AS GUARANTORS OF HUMAN RIGHTS

- 18 The right to identity is the legal and social recognition of a person as a subject of rights and responsibilities. It also recognizes that the person belongs to a State, a territory, a society, and a family, all of which are necessary conditions to preserve individual and collective dignity.¹ Birth registration for its part, is the legal act whereby the State fulfills its obligation to guarantee the right to identity, a name and family, cultural, and national affiliations. Through this act, the State also guarantees the administrative recognition of people's existence and legal personality.²
- 19 Several international instruments value birth registration as a mechanism to guarantee the right to a name, an identity and legal personality. These instruments are the Universal Declaration of Human Rights,³ the International Covenant on Civil and Political Rights,⁴ the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights Human Rights (ACHR)⁵ and the Convention on the Rights of the Child (CRC).⁶
- 20 Given its importance, the right to identity is guaranteed by the public powers through the organization of the civil registry, which must recognize the existence of individuals and help collect vital population statistics.⁷ In this vein, the role of civil registration institutions goes beyond administrative functions: they become immediate facilitators of the right to identity and of a progressive and interdependent chain⁸ of civil, political, economic, social, cultural and

1 PUICA, Metodología para la instalación de sistemas de registro hospitalario, 2013, page 11; UNICEF, Regional Office for Latin America and the Caribbean. Registro de nacimiento e infancia. 2007.

2 UNICEF, National Institute of Statistics and Geography (Mexico). Derecho a la identidad: la cobertura del registro de nacimiento en México, 2018, page 13.

3 Universal Declaration of Human Rights, 1948, art. 6.

4 International Covenant on Civil and Political Rights, 1981, arts. 16 and 24.

5 American Convention on Human Rights, 1969, arts. 3, 18 and 20.

6 Convention on the Rights of the Child, 1990, arts. 7 and 8.

7 [OAS, Encuentro Internacional España – OEA sobre registro civil y derecho a la identidad, page 3.](#)

8 Harbitz, M. (2007) y Acosta, M. (Julio-Agosto, 2007); Ana Lorena Flores Salazar, [El Registro Civil soporte del derecho a la identidad. Las personas trans](#) y el reconocimiento de la identidad de género, Revista Electoral, First quarter 2018. Issue 25, ISSN: 1659–2069.

environmental rights, the enjoyment and exercise of which depend on the legal recognition of identity.⁹This “modern” view of civil registries focuses mainly on individuals and the realization of their human rights.¹⁰

- 21 In the framework of the OAS, the Inter-American Program for Universal Civil Registry and the “Right to identity”,¹¹ approved by the OAS General Assembly in 2008, considers the recognition of identity as one of the means to facilitate the exercise of the rights to a legal personality, name, nationality, registration in the civil registry, family relationships, among others, whose exercise is essential for people to participate in a democratic society.¹²
- 22 PUICA has established that each country must guarantee identity recognition to all persons, without discrimination. To this end, various mechanisms can be implemented to facilitate access to the registry.¹³In addition, PUICA has found that civil registration rights are sufficiently recognized in the constitutions and laws of most States in the region.¹⁴Along the same lines, PUICA has highlighted that multiple constitutions in the region explicitly mention civil registration, or the right to register, under conditions of equality.¹⁵As for the law, PUICA has established that all the countries in the region include registration in the civil registry as mandatory.¹⁶
- 23 All of the above shows that there is consensus in the region on the obligation to provide the necessary means to carry out effective identity registrations under the indisputable pillar of non-discrimination. Due to its nature, implications, and foundations, this premise must consider the legal recognition of gender identity, as it is a constituent element of the right to identity.
- 24 These statements may be challenging in certain contexts of the region. However, we must bear in mind that various social dynamics and their changes create situations that violate or jeopardize the right to identity of various persons and population groups. These situations require civil registries to act

9 Ana Lorena Flores Salazar, El Registro Civil soporte del derecho a la identidad. Las personas trans y el reconocimiento de la identidad de género, Revista Electoral, First quarter 2018. Issue 25, ISSN: 1659–2069.

10 Idem.

11 The Inter-American Program for the Universal Civil Registry and the “Right to Identity” operates under the name of Universal Civil Identity Program in the Americas (PUICA) in the operational structure of the OAS General Secretariat.

12 Organization of American States. [AG/RES. 2362](#) (XXXVIII-O / 08) Inter-American Program for the Universal Civil Registry and the “Right to Identity”.

13 PUICA, Metodología para la instalación de sistemas de registro hospitalario, 2013, p. 11.

14 PUICA, Diagnóstico del Marco Jurídico-Institucional y Administrativo de los Sistemas de Registro Civil en América Latina, OEA/Ser.D/XX SG/SAP/III.14, 2010, page 7.

15 Idem.

16 Idem.

swiftly to address the challenges, guaranteeing effective access to the right to identity at all times. In other words, the fact that registries face challenges that entail rethinking or adjusting procedures is not new but rather typical in the region. These challenges have demanded continuous responses of the institutions that guarantee the right to identity.

- 25 In this context, we see a successful regional approach to these challenges in recent decades. Challenges have been faced and overcome by adapting and introducing some flexibility into procedures, adjusting them to the specific needs of each context, aiming to guarantee the timely registration and, therefore, the legal recognition of the right to identity intrinsic to all individuals. This has been the case, for example, of the under-registration of late registrations of birth, the registration of stateless persons, the paternal recognition of children born out of wedlock, and more recently, the complete rectification of the name and sex/gender components of registration documents in accordance with people's self-perceived gender identity.¹⁷

¹⁷ OAS, Universal Civil Identity Program in the Americas (PUICA), [Metodología de Campañas de Registro y Sensibilización en Zonas Fronterizas](#), 2014, OEA/Ser.D/XX SG/SAP/III.32; CEPAL, UNICEF, [El derecho a la identidad: Los registros de nacimiento en América Latina y el Caribe](#), Boletín de la infancia y adolescencia sobre el avance de los Objetivos de Desarrollo del Milenio, Issue 13, November 2011, ISSN 1816–7535.

4. GENDER IDENTITY AS A CONSTITUENT ELEMENT OF THE RIGHT TO IDENTITY AND THE PROHIBITION OF DISCRIMINATION BASED ON GENDER IDENTITY

4. GENDER IDENTITY AS A CONSTITUENT ELEMENT OF THE RIGHT TO IDENTITY AND THE PROHIBITION OF DISCRIMINATION BASED ON GENDER IDENTITY

26 Gender identity is the internal and individual experience of gender as felt by each person deeply, which may or may not correspond to the sex assigned at birth. Gender identity includes the personal experience of the body, as well as other expressions of gender such as dress, the way of speaking, and mannerisms.¹⁸

27 Based on self-determined gender identity, some individuals identify with the sex assigned at birth and are called "cisgender persons."¹⁹Others do not identify with said assignment and are called "transgender persons" or "trans persons."²⁰ It is important to note that gender identity is not subject to surgical interventions or medical treatments, because not all trans persons need body modifications to build their identity.²¹

In accordance with the principle of the free development of personality, individuals are free and autonomous to lead a life based on their values, beliefs, convictions, and interests.²² This includes the
28 internal experience of gender, the self-determination of gender identity according to said experience, and its expression both in public and in private. From this premise derives the right of

18 Yogyakarta Principles. Principles on the application of international human rights law in relation to sexual orientation and gender identity, 2006, p. 6.

19 Etymologically the prefix "cis" means "on this side" or "from here." Cisgender people are also known as people with normative gender identities, in the understanding that their self-perceived gender identity conforms to the socially accepted norm called "cisnormativity."

20 Etymologically the prefix "trans" means "through", "beyond," or "from one side to the other." Trans people are also known as people with non-normative gender identities, in the understanding that their self-perceived gender identity does not conform to the socially accepted norm called "cisnormativity."

21 IACHR, Report "Violence against LGBTI persons in the Americas", OAS/Ser.L/V/II.rev.2 Doc. 36, 12 November, 2015, p. 32.

22 Constitutional Court of Colombia. Judgment T-063/2015.

every person to have their self-perceived gender identity legally recognized and reflected in all identity documents, without major complications and requirements than those imposed on other people in society, so as to guarantee full access in conditions of equality.

- 29 This has been recognized by the I/A Court HR by establishing that people “may experience the need to be recognized as someone who is distinct and distinguishable from others. To achieve this, the State and society must respect and ensure the individuality of each person, as well as the right to be treated in keeping with the essential aspects of their personality, with no other limitations than those imposed by the rights of other persons.”²³“Thus, consolidating the individuality of the person before the State and before society implies having the legitimate authority to establish the exteriorization of their persona according to their most intimate convictions.”²⁴The legal recognition of gender identity is one of the first steps in this legitimate exteriorization of the way we are and in introducing conditions of equality to the dynamics of daily life in society.
- 30 In contrast, the lack of legal recognition of gender identity results in the censorship of identities that deviate from the current cisnormative, heteronormative, and binary standards. It also sends out a general message to society that individuals who deviate from the “traditionally accepted” regulatory spectrum will not be legally protected nor will their rights be recognized under the same conditions as those of individuals who comply with the prevailing social norms²⁵. This reinforces the assumption leading to discriminatory treatment difference.
- 31 In the Inter-American sphere, both the Inter-American Commission on Human Rights (IACHR) and the I/A Court HR have interpreted that the ACHR incorporates gender identity as a protected category under Article 1(1).²⁶In this sense, the I/A Court HR has established that the list of specific criteria by virtue of which discrimination is prohibited, according to Article 1(1) of the American Convention, is not exhaustive or restricting, but merely illustrative²⁷. Thus, the expression

23 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 91.

24 *Idem*.

25 Inter-American Commission on Human Rights, Observations presented by the Commission on February 14, 2017, para. 49. See, in the same sense, United Nations, Committee on the Rights of the Child, General Comment No. 20 (2016) on the effectiveness of the rights of the child during adolescence, December 6, 2016, CRC/C/GC/ 20, para. 34, and Office of the United Nations High Commissioner, Living Free & Equal. What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people, New York and Geneva, 2016, HR/PUB/16/3, pp. 86 and 87.

26 IACHR, Report “Violence against LGBTI persons in the Americas”, OAS/Ser.L/V/II.rev.2 Doc. 36, 12 November, 2015; I/A Court HR. Case of Karen Atala Riffo and daughters v. Chile Merits, reparations and costs. Judgment of February 24, 2012. Series C No. 2012

27 I/A Court HR. Case of Karen Atala Riffo and daughters v. Chile Merits, reparations and costs. Judgment of February 24, 2012. Series C, para. 85.

"any other social condition" in Article 1(1) must be interpreted from the view that is most favorable to the person and from the perspective of the evolution of fundamental rights in contemporary international law.²⁸

32 On the expression of gender, the Inter-American Court has stated, that the prohibition to discriminate on the grounds of gender identity is understood not only with regard to the real or self-perceived identity of the person, but also in relation to the externally perceived identity, regardless of whether or not that perception corresponds to reality. Thus, any expression of gender constitutes a protected category under Article 1(1) of the American Convention.²⁹

33 In accordance with the jurisprudence of the Inter-American system, the recognition of gender identity as one of the categories protected by the non-discrimination clause established in Article 1(1) of the Convention implies that: i) States have the obligation not to make differences in treatment based on gender identity; ii) any difference in treatment based on gender identity must be strictly scrutinized and, therefore, only justified by very sound reasons; and iii) States have the obligation to take the necessary action to ensure the real equality of persons whose sex assigned at birth does not match their gender identity.

34 It should be noted that in this approach, the Court has been emphatic in restating that the lack of consensus in some countries as regards to the full respect for the rights of certain groups or persons identified by their real or perceived sexual orientation, gender identity or gender expression cannot be considered a valid argument to deny or restrict their human rights or to reproduce and perpetuate the historical and structural discrimination that these groups or persons have suffered. Therefore, a right that has been recognized to all persons cannot be denied or restricted to anyone in any circumstance, on the grounds of sexual orientation, gender identity or gender expression, since this would violate Article 1(1) of the American Convention.³⁰

35 This statement is fully applicable to registration procedures, which operate under the pillar of the right of all people to identity, so it cannot be denied to any person based on their self-perceived gender identity. To guarantee full access under conditions of equality, it is necessary to adapt existing procedures to ensure that all individuals, regardless of their gender identity, have full access to the

28 I/A Court HR Case of Karen Atala Riffo and daughters v. Chile Preliminary objections, reparations and costs. Judgment of February 24, 2012. Series C No. 239, para. 85.

29 Idem.

30 I/A Court HR Gender identity, and equality and non-discrimination against same-sex couples, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 78.

31 Ibid, paragraph 84.

registration of their identity, and that this registration corresponds with their self-perceived identity.

- 36 In conclusion, it can be argued that gender identity is a constituent and constitutive element of people's identity, which is why its recognition by the State is essential to guarantee the full enjoyment of human rights of trans individuals, including the protection against violence, torture, mistreatment, the right to health, education, employment, housing, access to social security, as well as the right to freedom of expression, and of association.³¹The recognition of a person's identity is one of the means to facilitate the exercise of the rights to a legal personality, a name, a nationality, registration in the civil registry, family relations, among others.³²Therefore, the lack of legal recognition of gender identity exposes individuals to discriminatory situations, such as the lack of a legal certification of one's own existence, and hinders their access to their rights.³³

³²United Nations, Office of the United Nations High Commissioner, *Living Free & Equal. What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, New York and Geneva, 2016, HR/PUB/16/3, p. 94.

³³Case of *Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014. Series C No. 282, para. 267, and Case of *Gelman v. Uruguay*, para. 123. See also: OAS, General Assembly, Resolution AG/RES. 2362 (XXXVIII-O/08), "Inter-American program for universal civil registry and the "right to identity" of June 3, 2008, and Resolution AG/RES. 2602 (XL-O/10), Human rights, sexual orientation, and gender identity of June 8, 2010. Also, OAS, The Inter-American Juridical Committee, Opinion "on the scope of the right to identity," Resolution CJI/doc. 276/07 rev. 1, of August 10, 2007, paras. 11.2 and 18.3.3.

³⁴OAS, General Assembly, Resolution AG/RES. 2362 (XXXVIII-O/08), "Inter-American program for universal civil registry and the "right to identity" of June 3, 2008, and Resolution AG/RES. 2602 (XL-O/10), Human rights, sexual orientation, and gender identity of June 8, 2010.

5. THE OBLIGATIONS OF CIVIL REGISTRIES IN THE LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW

5.

OBLIGATIONS OF CIVIL REGISTRIES IN THE LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW

- 37 As guarantors of human rights, civil registries' operations are guided by the principles of legality and non-discrimination³⁴. This implies, among other aspects, guaranteeing the recognition of and respect for rights, in line with the commitments made by the State they belong to at the international level and in accordance with the relevant constitutional mandates. In this regard, most of the region's constitutions regulate the control of national and international standards, as well as the harmonious interpretation that public officials must make of these standards within their competences.
- 38 In the Inter-American Human Rights System, this integration of national and international standards guided by the *pro persona* principle³⁵(whose implications lead to prioritizing the broader rule or criterion in the protection of human rights, or the rule or criterion that least restricts their enjoyment), has been called *conventionality control*.
- 39 Since circa 2006,³⁶ the jurisprudence of the I/A Court HR has been using the concept of *conventionality control* to refer to the instrument that allows States to implement their obligation to guarantee human rights internally by verifying the conformity of national standards and practices to the ACHR and its jurisprudence.³⁷ This is a recent concept and its appearance on the legal stage is closely related to the obligations that the ACHR imposes on the States to comply internally with the human rights obligations arising from it.³⁸

27

1 OAS, General Assembly, Resolution AG/RES. 2362 (XXXVIII-O/08), "Inter-American program for universal civil registry and the "right to identity" of June 3, 2008, and Resolution AG/RES. 2602 (XL-O/10), Human rights, Sexual Orientation, and Gender Identity of June 8, 2010.

2 ALEXY, R., "Ponderación, control de constitucionalidad y representación," in R. Alexy, *Teoría del discurso y derechos constitucionales*, Mexico, 2005, pp. 89–103. Translated by René González de la Vega. ALEXY, R., *Derecho y razón práctica*, Mexico, Fontamara, 1993. ALEXY, R., *Teoría de la argumentación jurídica*, Madrid, Centro de Estudios Constitucionales, 1989.

3 I/A Court HR Case of Almonacid Arellano et al. v. Chile Preliminary objections, merits, reparations and costs. Judgment of September 26, 2006. Series C No. 154.

4 I/A Court HR, Case Law of the Inter-American Court of Human Rights No. 7: Conventionality control.

5 Idem.

- 40 Internally, conventionality control must be conducted by all public servants to assess if internal regulations are compatible with the ACHR. In this compatibility analysis, public servants must act within the scope of their competences and attributions. The control aims to verify the conformity of national rules, as well as their interpretation and application, to the ACHR and other human rights instruments that bind the State, ensuring that these standards are correctly applied.³⁹
- 41 This control may have several consequences, such as disengaging or removing rules contrary to the ACHR from the national system, interpreting national rules so that they align with the obligations of the State, modifying practices of public bodies that may be contrary to the international standards to which the State has committed, among other forms of fulfilling the State's human rights obligations.⁴⁰
- 42 In this regard, the Inter-American Court has established in its jurisprudence that domestic authorities are subject to the rule of law and, therefore, are obliged to apply the legal provisions in force.⁴¹ These provisions include international human rights treaties such as the ACHR. Therefore, all its bodies—including civil registries—are subject to the instrument, which obliges them to ensure that the effects of the ACHR provisions are not affected by the application of rules contrary to their object and purpose.⁴² It follows that all authorities have the obligation to exercise conventionality control *ex officio*⁴³ to guarantee regulatory harmony and ensure that the application of national rules does not undermine the object and purpose of human rights instruments that the State has previously ratified.
- 43 In doing so, they must consider not only the treaty, but also the interpretation made by the Inter-American Court, the ultimate interpreter of the ACHR. ⁴⁴ To perform this interpretation, public

39 *Idem.*

40 *Idem.*

41 I/A Court HR, I/A Court HR. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objections, merits, reparations and costs. Judgment of November 26, 2010. Series C No. 220; Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs. Judgment of January 30, 2014, para. 151; Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014, para. 311.

42 *Idem.*

43 I/A Court HR, Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits, reparations and costs. Judgment of November 30, 2012. Series C No. 259, para. Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, para. 436.

44 I/A Court HR Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of February 29, 2016, para. 242; I/A Court HR, I/A Court HR. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objections, merits, reparations and costs. Judgment of November 26, 2010. Series C No. 220; Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs. Judgment of January 30, 2014, para. 151; Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014, para. 311.

bodies must consider the jurisprudential legacy of the Inter-American Court, including the most recent developments, such as OC-24/17, applying them when necessary within their competences, either for the harmonious adaptation of standards or to fill a regulatory gap.

- 44 As public servants must apply this conventionality control internally, the democratic legitimation of certain facts or acts in a society is limited by the international rules and obligations to protect human rights recognized in treaties such as the ACHR.⁴⁵ In other words, the internal application of an *ex officio* conventionality control legitimizes the actions of the officials who apply it within their competences with the aim of harmonizing the guidelines of domestic standards with international law mandates and obligations.
- 45 This criterion aims to ensure that human rights instruments are “living instruments” that are constantly adapted to current times and to the legal protection challenges brought about by social change. Therefore, national rules would be kept updated with the changing times by applying this conventionality control. As the main objective of various state institutions is to guarantee the effective protection of rights (and in the case of civil registries, to achieve the legal recognition of legal personality as well), the application of conventionality control allows them to comply with their legal duty and institutional mission, and at the same time become legitimate when making these decisions since their action is protected by the body of law upon which the national legal framework is built and its supreme law: the Constitution.
- 46 Therefore, the evolution of the jurisprudence of the Inter-American Court shows that conventionality control as an effective tool for complying with the State’s obligations has the following main characteristics:
- It entails verifying the compatibility of standards and other domestic practices with the ACHR, the jurisprudence of the Inter-American Court and the other Inter-American treaties to which the State is a party.
 - It must be conducted *ex officio* by all public authorities.
 - It is conducted within the scope of the competences of each authority. Therefore, its execution may entail removing rules that are contrary to the ACHR or interpreting them in accordance with the ACHR.
 - After conventionality control, an integrative exercise must be carried out to make the State obligations compatible with its internal standards.

45 I/A Court HR Gelman v. Uruguay. Merits and reparations. Judgment of February 24, 2011. Series C No. 221.

- Both the international standards and the jurisprudence of the Inter-American Court, either of a contentious or advisory nature, are sources for conventionality purposes; and
- The obligation to control conventionality derives from the principles of public international law and from the State's own international obligations assumed by becoming a party to the American Convention on Human Rights.

47 In the specific case of conventionality control over the jurisprudential legacy of the Inter-American Court in its advisory jurisdiction, the Court has specified that “the interpretation given to a provision of the Convention through an advisory opinion provides all the organs of the Member States of the OAS, including those that are not parties to the Convention but that have undertaken to respect human rights under the Charter of the OAS (Article 3(l)) and the Inter-American Democratic Charter (Articles 3, 7, 8 and 9), with a source that, by its very nature, also contributes, especially in a preventive manner, to achieving the effective respect and guarantee of human rights. In particular, it can provide guidance when deciding matters relating to children in the context of migration and to avoid possible human rights violations.”⁴⁶

48 Therefore, in short, conventionality control entails comparing a national rule or practice to the provisions of the Convention to determine the compatibility of the former and, consequently, if one supersedes the other in case of contradiction.⁴⁷ All public bodies must exercise this conventionality control, including civil registries in matters of legal recognition of identity, and therefore must implement procedures that guarantee the effective access to identity registration or rectification according to the gender identity and expression of all persons, without imposing unreasonable, invasive or pathologizing requirements that consider non-cisnormative gender identity as "a pathology" that must be "diagnosed" by medical experts. This is so with the understanding that conventionality control would not only be applicable to the Convention, but also to all treaties in force for the State in question.⁴⁸

46 I/A Court HR, Advisory Opinion OC-21/14, para. 31.

47 Separate opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Advisory Opinion OC-24/17 of November 24, 2017, requested by the Republic of Costa Rica. Gender identity, and equality and non-discrimination of same-sex couples.

48 I/A Court HR, Case Law of the Inter-American Court of Human Rights No. 7: Conventionality control.

6. THE IMPLICATIONS OF OC-24/17 FOR CIVIL REGISTRIES REGARDING THE RECOGNITION OF GENDER IDENTITY

6.

THE IMPLICATIONS OF OC-24/17 FOR CIVIL REGISTRIES REGARDING THE RECOGNITION OF GENDER IDENTITY

- 50 In the previous section, we established that conventionality control is a binding tool for the region's civil registries to guarantee the compatibility of national and international standards. This section addresses the guidelines and main standards that stem from Advisory Opinion OC-24/17 of the Inter-American Court. We highlight those that are most relevant to identity registration as carried out by civil registries, and the importance of including the legal recognition of gender identity of all persons in fulfilling that duty.

Legal bases

- 51 In Advisory Opinion OC-24/17, the Inter-American Court established that, under the ACHR, the State must guarantee the legal recognition of the gender identity of all persons without discrimination, based on their right to a name (art. 18), private life (art. 11(2)), personal liberty (art. 7), freedom of expression (art. 13) and equality and non-discrimination (articles 1(1) and 24). As well, the I/A Court HR clearly confirms that, in their diversity of gender identities and expressions, people should be able to enjoy their legal capacity in all aspects of life.⁴⁹ This is so because the sexual orientation or gender identity that each person defines for themselves is essential for their personality and constitutes one of the fundamental aspects of their self-determination, dignity and liberty.⁵⁰
- 52 In this regard, the Court has established that the ACHR includes a universal clause for the protection of dignity, which is based both on the principle of personal autonomy and on the idea that all individuals should be treated equally, insofar as they are ends in themselves according to their intentions,

⁴⁹ I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 104.

⁵⁰ Mutatis mutandis, Principles on the application of international human rights law in relation to sexual orientation and gender identity, Yogyakarta Principles, 2007. Principle 6.

will and own life decisions.⁵¹ Furthermore, the Inter-American Court has also indicated that the protection of the right to a private life is not restricted to the right to privacy because it comprises a series of factors related to the dignity of the individual, including the capacity to develop their own personality and aspirations, determine their identity, and define their personal relationships, among others.⁵² The concept of *private life* encompasses aspects of social and physical identity, including the right to personal autonomy and personal development, and to establish and develop relationships with other human beings and with the external world.⁵³ Likewise, it includes how individuals see themselves and decide to present themselves to others.⁵⁴ This is an essential condition for the free development of personality.⁵⁵

- 53 As mentioned in previous sections, the Inter-American Court in said decision considered that the possibility for self-determination and to freely choose the options and circumstances that give meaning to a person's existence in keeping with their own choices and convictions, are essential aspects of the recognition of dignity.⁵⁶ Thus, based on the principle of the free development of the personality or of personal autonomy, everyone is free and autonomous to live in a way that accords with their values, beliefs, convictions, and interests.⁵⁷
- 54 Regarding personal liberty, the Inter-American Court has determined that everyone has the right to organize, pursuant to the law, their individual and social life following their own choices and convictions.⁵⁸ On this point, the United Nations Human Rights Committee has stated that the notion of privacy refers to the sphere of a person's life in which he or she can freely express their identity, that being in his or her relationships with others or by themselves.⁵⁹
- 55 The right to identity, for its part, is defined by the Inter-American Court as "the collection of attributes and characteristics that allow for the individualization of the person in a society, and,

51 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 86

52 Ibid, paragraph 87.

53 I/A Court HR, Case of I.V v. Bolivia. Preliminary objections, merits, reparations and costs, para. 152; Case of Fernández Ortega et al. v. Mexico. Preliminary objections, merits, reparations and costs. Judgment of August 30, 2010. Series C No. 215, para. 129, and Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica, para. 143.

54 I/A Court HR, Case of Rosendo Cantú et al. v. Mexico. Preliminary objections, merits, reparations and costs. Judgment of August 31, 2010. Series C No. 216, para. 119, and Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica, para. 143.

55 I/A Court HR, Case of I.V v. Bolivia. Preliminary objections, merits, reparations and costs, para. 152.

56 I/A Court HR, Case of I.V v. Bolivia. Preliminary objections, merits, reparations and costs, para. 150; Case of Atala Riffo and daughters v. Chile Merits, reparations and costs, para. 136, and Case Flor Freire v. Ecuador, para. 103.

57 See Constitutional Court of Colombia. Judgment T-063/2015.

58 I/A Court HR, Case of I.V v. Bolivia. Preliminary objections, merits, reparations and costs, para. 148, and Case Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2007. Series C No. 170, para. 52.

59 I/A Court HR, United Nations, Human Rights Committee, Case of Coeriel et al. v. The Netherlands, December 9, 1994, CCPR/C/52/D/453/1991, para. 10.2.

in that sense, encompasses a number of other rights according to the subject it treats and the circumstances of the case.”⁶⁰ This right can be affected by a number of situations or contexts that can occur from childhood to adulthood.⁶¹

- 56 It should be noted that the ACHR does not explicitly refer to the right to identity under this name, but it includes other rights that are components of this right,⁶² such as the right to a name, which is part of the right to identity, but it is not its only component.⁶³ Furthermore, the I/A Court HR has indicated that the right to identity is also closely related to human dignity, the right to private life, and the principle of personal autonomy (Articles 7 and 11 of the ACHR).⁶⁴
- 57 It is essential to consider that the strengthening of a person’s individuality before the State and society is reflected in their legitimate power to externalize their way of being, in accordance with their most intimate convictions.⁶⁵ A large number of people in the Americas experience the need to be recognized as beings that differ from the cisnormative social patterns and are distinguishable from others. To fulfill this need, the States of the region must respect and guarantee the individuality of each of them, as well as their right to be treated in accordance with the essential aspects of their personality, without other limitations than those imposed by the rights of other people.⁶⁶ The first step is to recognize them as subjects of rights according to their personal characteristics, recognizing their existence as they are and reflecting this in the legal registration of their identity.
- 58 In the words of the I/A Court HR, the right to gender identity is an autonomous right “that is based on the regulations of international law and those that derive from the cultural elements considered in the domestic legal systems of the States, in order therefore to satisfy the specificity of the individual, with his or her rights that are unique, singular and identifiable.”⁶⁷

60 I/A Court HR, Case of Gelman v. Uruguay, para. 122; Case of Fornerón and daughter v. Argentina, para. 123, and Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs. Judgment of October 14, 2014. Series C No. 285, para. 116.

61 I/A Court HR, Case of Contreras et al. v. El Salvador. Merits, reparations and costs. Judgment of August 31, 2011. Series C No. 232, para. 113.

62 I/A Court HR, Case of Gelman v. Uruguay, para. 122, and Case of Contreras et al. v. El Salvador, para. 112. Also, see OAS, The Inter-American Juridical Committee, Opinion “on the scope of the right to identity,” Resolution CJI/doc. 276/07 rev. 1, of August 10, 2007, para 11.2.

63 OAS, The Inter-American Juridical Committee, Opinion “on the scope of the right to identity,” Resolution CJI/doc. 276/07 rev. 1, of August 10, 2007, para 11.

64 I/A Court HR, Case of I.V v. Bolivia. Preliminary objections, merits, reparations and costs, para. 149 to 152.

65 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 91.

66 Idem.

67 OAS, The Inter-American Juridical Committee, Opinion “on the scope of the right to identity,” Resolution CJI/doc. 276/07 rev. 1, of August 10, 2007, para 15.

- 59 Moreover, the I/A Court HR considers that the right to identity, and particularly the manifestation of identity, is also protected by Article 13, which recognizes the right to freedom of expression.⁶⁸ Therefore, arbitrarily interfering in the expression of the different attributes of identity may entail an infringement of this right.⁶⁹
- 60 Furthermore, the right to juridical personality also includes the possibility of all human beings, based on the mere fact of existing and irrespective of their condition, to possess certain attributes that constitute the essence of their juridical personality and individuality as rightsholders.⁷⁰ Consequently, there is a close connection between the recognition of juridical personality and the legal attributes inherent to all human beings that distinguish, identify and individualize them.⁷¹
- 61 Accordingly, the right of individuals to autonomously define their own sexual and gender identity is made effective by guaranteeing that their self-determined identities correspond with the personal identification information recorded in the different registries, as well as on identity documents.⁷² This implies the existence of the right of all individuals to have the personal attributes and characteristics recorded in registries and other identification documents coincide with their own identity definition and, if this is not the case, to have a mechanism to amend those records.⁷³
- 62 This is further supported by the fact that the right to a name as an attribute of personality represents an expression of individuality, and its end is to affirm the identity of a person before society and in procedures before the State. Its purpose is to ensure that every individual has a unique and singular sign that distinguishes them from everyone else, by which the person can be identified and recognized.⁷⁴ In addition, the I/A Court HR has indicated that this right, recognized in Article 18 of the ACHR as well as in various international instruments,⁷⁵ constitutes a basic and essential element of the identity of each person, without which they cannot be recognized by society or registered by the State.⁷⁶

68 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 96.

69 *Idem*.

70 *Ibid*, para. 104.

71 Constitutional Court of Colombia, Judgment C-109 of 1995, section II, Nos. 7 and 8, and Judgment T-090 of 1995, section 2, No. 2.2.

72 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 105.

73 *Idem*.

74 *Idem*.

75 I/A Court HR, Case of Gelman v. Uruguay, para. 127. Also, see inter alia, the International Covenant on Civil and Political Rights, Article 24(2); Convention on the Rights of the Child, Article 7(1); African Charter on the Rights and Welfare of the Child, Article 6(1), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 29. The European Court of Human Rights has stated that the right to a name is protected by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, even though it is not explicitly mentioned. ECHR, Case of Stjerna v. Finland, No. 18131/91, Judgment of November 25, 1994, para. 37, and Case of Burghartz v. Switzerland, No. 16213/90, Judgment of February 22, 1994, para. 24.

76 I / A Court HR, Case of the Yean and Bosico Girls v. Dominican Republic, para. 182, and Case of Expelled Dominicans and Haitians v. Dominican Republic, para. 268.

- 63 In consideration of the above, States, and especially the civil registries of the region, must take into consideration that the lack of legal recognition of gender identity could result in the censorship of identities and expressions that deviate from the current cisnormative, heteronormative and binary standards, while sending out a general message to society that the individuals who deviate from the “traditionally accepted” regulatory spectrum will not be legally protected nor will their rights be recognized under the same conditions as those people of individuals who live within the prevailing social rules.⁷⁷ This leads not only to a disregard for the juridical personality and legal identity of the person in question, but also to an infringement of their conventional right to freedom of expression.
- 64 Accordingly, States and their relevant bodies, as guarantors of all rights, must respect and ensure the coexistence of individuals with varied identities, gender expressions and sexual orientations and, therefore, must ensure that they are all able to live and develop with dignity and the respect to which everyone has a right.⁷⁸ This mandate is reinforced by the conventional obligation to legally recognize the gender identity of persons and ensure that their registration in national identity registries matches their identity, which based on the right to a name, to personal freedom, a private life, and freedom of expression, under the principles of human dignity and equality and non-discrimination.

Guidelines for civil registries

- 65 The change of name, the rectification of the image and the rectification of sex or gender markers in public records and identity documents so that they correspond to the self-perceived gender identity is a right protected by Article 18 (Right to a Name), but also by Articles 3 (Right to Recognition of Juridical Personality), 7(1) (Right to Personal Liberty), and 11(2) (Right to Privacy) of the American Convention. Consequently, pursuant to the obligation to respect and ensure rights without any discrimination (Articles 1(1) and 24 of the Convention), and the obligation to adopt domestic legal provisions (Article 2 of the Convention), States are obliged to recognize, regulate, and establish the appropriate procedure to this end.¹

⁷⁷ Inter-American Commission on Human Rights, Observations presented by the Commission on February 14, 2017, para. 49. See also United Nations, Committee on the Rights of the Child, General Comment No. 20 (2016) on the effectiveness of the rights of the child during adolescence, December 6, 2016, CRC/C/GC/20, para. 34, and Office of the United Nations High Commissioner, Living Free & Equal. What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people, New York and Geneva, 2016, HR/PUB/16/3, p. 86–87.

⁷⁸ I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 100.

- 66 By virtue of the provisions of the I/A Court HR in OC-24/17, States are obliged not only to protect the right to a name, but also to provide the means required to facilitate a person's registration.⁷⁹ This is based on the fact that establishing the name, as an attribute of the personality, is determinant for the free development of the choices that give meaning to a person's existence, as well as to the realization of the right to identity.⁸⁰ Thus, everyone should be able to choose their name freely and change their name as they wish,⁸¹ and the States must guarantee the means to materialize these changes and rectifications in the identity documents, without discrimination. This is why the lack of legal recognition of identity and the resulting refusal to rectify the individual's name in accordance with their self-perceived identity implies that the person fully or partially loses their rights. As well, although their existence can be found in a specific social context within the State, the person is not legally recognized based on an essential component of their identity.⁸² In such circumstances, the right to recognition of juridical personality and the right to gender identity are also undermined.⁸³
- 67 In this way, it can also be inferred that the right to recognition of gender identity necessarily includes the right to have personal information in records and identity documents be consistent with the sexual and gender identity assumed by transgender persons.⁸⁴ In this regard, the Yogyakarta Principles establish the obligation of States "to take all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity," and to ensure that "such procedures exist whereby all State-issued identity papers which indicate a person's gender/sex—including birth certificates, passports, electoral records and other documents—reflect the person's profound self-defined gender identity."⁸⁵
- 68 The lack of correspondence between a person's self-perceived gender identity and the one recorded on their identity documents implies depriving them of a constitutive dimension of their personal

79 I / A Court HR, Case of the Yean and Bosico Girls v. Dominican Republic, para. 183, and Case of Expelled Dominicans and Haitians v. Dominican Republic, para. 268.

80 On this point, for example, Act No. 26,743, which established the right to gender identity in Argentina, stipulates that everyone has a right "to be treated in keeping with their gender identity and, in particular, to be identified in this way in the instruments that prove their identity as regards the given name(s), photograph, and sex with which they are registered."

81 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 111.

82 I/A Court HR, Case of the Yean and Bosico Girls v. Dominican Republic, para. 180.

83 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 111.

84 Ibid, para. 112.

85 Yogyakarta Principles, 2007. Principle 3.

autonomy—the right to live as they want—which in turn can make them the object of rejection and discrimination by others—the right to live without humiliation—and make it difficult for them to have job opportunities that allow them to access the material conditions necessary for a decent life.⁸⁶ This also infringes their constitutional rights and those under the Convention, and compromises the responsibility of State institutions that do not guarantee timely records, and could potentially compromise the international responsibility of States.

- 69 In this regard, it should be noted that the I/A Court HR has emphasized the obligation of the States mentioned throughout this document regarding guaranteeing the recognition of gender identity, as this is essential for the full enjoyment of other human rights.⁸⁷ The lack of recognition of gender identity also leads to harsher discrimination against such persons and may also become a major obstacle for the full enjoyment of all the rights recognized by international law, such as the right to a decent life, freedom of movement, freedom of expression, civil and political rights, personal integrity, health, education, and all the other rights.⁸⁸
- 70 Consequently, it can be concluded that every person has the right to define their sexual and gender identity autonomously, and that the personal information in records and on identity documents should be consistent with their self-defined identity. This right is protected by the American Convention under the provisions that ensure the free development of the personality (Articles 7 and 11(2)), the right to privacy (Article 11(2)), the recognition of juridical personality (Article 3), and the right to a name (Article 18).⁸⁹
- 71 Therefore, States must respect and ensure to everyone the possibility of registering and/or changing, rectifying, or amending their name and other essential components of their identity

⁸⁶ United Nations, Report of the United Nations High Commissioner for Human Rights. Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, 17 November 2011, A/HRC/19/41, para. 71.

⁸⁷ United Nations, Office of the United Nations High Commissioner for Human Rights, Living Free & Equal, HR/PUB/16/3, p. 94.

⁸⁸ United Nations, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/29/23, paras. 21 and 60 to 62; Human Rights Committee, Concluding observations on the fourth periodic report of the Bolivarian Republic of Venezuela, 14 August 2015, CCPR/C/VEN/CO/4, para. 8; Concluding observations on the seventh periodic report of Ukraine, 22 August 2013, CCPR/C/UKR/CO/7, para. 10; Concluding observations on the third periodic report of Suriname, 3 December 2015, CCPR/C/SUR/CO/3, para. 27; Committee against Torture, Concluding observations of the Committee against Torture: Kuwait, June 28, 2011, CAT/C/KWT/CO/2, para. 25; Concluding observations on the second periodic report of Kyrgyzstan, 20 December 2013, CAT/C/KGZ/CO/2, para. 19; United Nations Educational, Scientific and Cultural

Organization - UNESCO, Out in the open: Education sector responses to violence based on Sexual Orientation and Gender Identity/Expression, Paris, 2016; Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, April 19, 2017, A/HRC/35/36, para. 57. In this regard, see Supreme Court of Justice of Mexico, Direct amparo 6/2008. January 6, 2009, p. 6.

⁸⁹ I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 115.

such as the image, or the reference to sex or gender, without interference by the public authorities or by third parties.⁹⁰ Moreover, the State must ensure that any person can exercise their rights and contract obligations based on that same identity, without being forced to purport an identity that does not represent their individuality, especially when this involves a continuous exposure to the social questioning of that same identity, thus affecting the exercise and enjoyment of the rights recognized by domestic and international law.⁹¹

a. On the procedure for rectifying identity data according to self-perceived gender identity

- 72 States may determine and establish, in keeping with the characteristics of each context and their domestic law, the most appropriate procedures for the change of name, rectification of the photograph and of sex or gender markers in records and on identity documents so that these conform to the self-perceived gender identity, regardless of whether these are of an administrative or judicial nature.² However, these procedures should comply with the following requirements: (a) they must be aimed at the complete conformity with the self-perceived gender identity; (b) they must be based solely on the free and informed consent of the applicant without requirements such as medical and/or psychological certifications or other requests that could be unreasonable or pathologizing; (c) they must be confidential. In addition, the changes, corrections or amendments to the records and identity documents must not reflect the changes made based on the gender identity; (d) they must be prompt and, insofar as possible, cost-free, and (e) they should not require evidence of surgery and/or hormonal therapy.³
- Administrative or notarial procedures are best suited to and most appropriate for these requirements, and States may provide a parallel administrative procedure so as to allow the person concerned to choose.⁴

- 73 In the Advisory Opinion OC-24/17, the I/A Court HR stated that in order to ensure that the interested persons are able to amend public records and identity documents so that these

90 Idem.

91 Idem.

correspond to their self-perceived gender identity, the procedures should be regulated and implemented in accordance with certain basic characteristics, so that this right is truly protected, and the procedures do not violate the rights of third parties protected by the ACHR.⁹² Furthermore, the measures implemented should not hinder the principle of legal certainty, which guarantees stability in the legal situations⁹³ recognized by the State. These situations must be maintained over time with respect to access and legal effects, regardless of the nature or range of the standard that regulates them or of any possible change of authorities if it is an administrative decision.

- 74 In relation to the effects of the procedure for the recognition of gender identity, it must not change the ownership of the legal rights and obligations that may correspond to the person prior to the registration of the change, nor those arising from relationships under family law in all its varying degrees.⁹⁴ This means that all the acts with legal effects executed by a person before the procedure that amends the identity data – in accordance with their self-perceived gender identity – shall continue to produce these effects and be enforceable, except in cases in which the law itself determines their extinction or modification.⁹⁵ For example, property rights, marital ties and rights related to the legal custody of descendants.

• *These procedures must be aimed at the complete conformity with the self-perceived gender identity*

- 75 In addition to the name, this procedure should be designed to comprehensively rectify other components of the identity so that it can conform to the self-perceived gender identity of the person.⁹⁶ Therefore, the procedure should allow to change the registration of the given name and, if applicable, change of the photograph, as well as the rectification of the recorded gender or sex, on the identity documents and in all the relevant records required for the interested parties to exercise their subjective rights.⁹⁷
- 76 Furthermore, it is worth stressing that changes made to the identity data so that it conforms to the self-perceived gender identity of the applicant is not limited to the given name, but also covers elements such as the person's sex or gender, and the photograph of the person concerned, since personal

92 *ibid*, para. 167.

93 *Ibid*, para. 167–168.

94 See, Argentina, Gender Identity Law No. 26.743 of May 23, 2012, Article 7. I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 120.

95 See Supreme Court of Justice of Mexico, Direct amparo 6/2008. January 6, 2009, pg. 17.

96 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 121.

97 *Idem*.

photographs and pictures are included within the sphere of the protection of privacy.⁹⁹ Moreover, the photograph is a form of expression included in the sphere of protection of Article 13 of the Convention.¹⁰⁰ The photograph not only supports or gives credibility to the information provided in writing but has a significant content and expressive, communicative and informative value. Indeed, in some cases, photographs can communicate or inform with the same or greater impact than the written word.¹⁰¹

- 77 Similarly, that States, through civil registries and/or other relevant institutions, must endeavor to ensure that those interested in the recognition of their self-perceived gender identity in the public records as well as on their identity documents do not have to undertake several procedures before numerous authorities¹⁰² to achieve a comprehensive rectification of their legal identity in the public information system. It is a State obligation to ensure that any changes in the personal data recorded before the civil registers is updated in all other relevant documents and institutions without requiring the applicant's intervention, so that this person does not incur unreasonable burdens to achieve the amendment of their self-perceived gender identity in all relevant records.¹⁰³
- 78 In this sense, PUICA has encouraged States to endeavor to identify, systematize and unify the basic criteria and standards needed to ensure that national civil registry systems can function properly and guarantee universal coverage. Also, States must promote the simplification of civil registry administrative processes and their standardization at the national level.¹⁰⁴

98 I/A Court HR, Argentina. Law No. 26.743 of May 23, 2012, Article 1.c. Article 1 of Argentina's Act No. 26,743, which established the right to gender identity, stipulates that everyone has a right "to be treated in keeping with their gender identity and, in particular, to be identified in this way in the instruments that prove their identity as regards the given name(s), photograph, and sex with which they are registered." Also, in Bolivia, Act No. 807 of May 21, 2016, establishes the procedure for the change of name, sex and photograph of transsexual and transgender persons in any public or private documentation related to their identity,

allowing them to exercise fully their right to gender identity. Decisions have also been issued by domestic courts recognizing the foregoing; see, for example: Brazil, Superior Court of Justice, Judgment of May 9, 2017; Chile, Santiago Appeals Court, Judgment of March 9, 2015, case No. 9901–2014, and Colombia, Constitutional Court, Judgment T-063/15 Constitutional Court. Judgment T-063/15.

99 I/A Court HR, *Fontevicchia and D'Amico vs. Argentina*, para. 67. See also, ECHR, *Schussel vs. Austria*, Admissibility, No. 42409/98. Decision of February 21, 2002, para. 2, and *Flor Freire vs. Germany*, Nos. 40660/08 and 60641/08. Judgment of February 07, 2012, para. 50.

100 I/A Court HR, *Fontevicchia and D'Amico vs. Argentina*, para. 67. See also, ECHR, *Von Hannover vs. Germany*, Nos. 40660/08 and 60641/08. Judgment of February 07, 2012, para. 42, and *MGN Limited vs. United Kingdom*, No. 39401/04. Judgment of January 18, 2011, para. 143.

101 I/A Court HR, *Fontevicchia and D'Amico vs. Argentina*, para. 67.

102 I/A Court HR *Gender identity, and equality and non-discrimination of same-sex couples*. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 124.

103 *Idem*.

104 OAS, General Assembly of the OAS, Resolution AG/RES. 2362 (XXXVIII-O/08). Section "Specific measures", Nos. 2.g and 2.i.

• The procedure must be based solely on the applicant's free and informed consent, without requirements such as medical and/or psychological or other requests that could be unreasonable or pathologizing.

- 79 The procedures aimed at the recognition of gender identity are based on the possibility for self-determination and to freely choose the options and circumstances that give meaning to a person's existence, in keeping with their own choices and convictions, and the right to dignity and privacy.¹⁰⁵ Thus the regulation and implementation of these procedures must be based solely on the free and informed consent of the applicant¹⁰⁶ and under a merely declarative nature.¹⁰⁷
- 80 From this perspective, the procedure for the recognition of gender identity should not require applicants to meet abusive preconditions such as the presentation of medical certificates or evidence of unmarried civil status,¹⁰⁸ nor should applicants be subjected to medical or psychological assessments related to their self-perceived gender identity, or other requirements that undermine the principle according to which gender identity is not to be proven. Consequently, the procedure should be based on the mere expression of the applicant's intention.¹⁰⁹ Likewise, the Yogyakarta Principles stipulate that "[n]o status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity."¹¹⁰
- 81 Medical, psychological or psychiatric certificates are not only of an invasive nature and call into question the applicant's self-assigned identity, but they are based on the assumption that having an identity

¹⁰⁵ I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 124.

¹⁰⁶ Idem.

¹⁰⁷ Ibid, para. 124.

¹⁰⁸ United Nations, United Nations High Commissioner for Human Rights. Report "Discrimination and violence against persons on the basis of sexual orientation and gender identity." May 4, 2015, A/HRC/29/23, para. 79; Human Rights Committee. Concluding Observations of the Committee: Ireland. July 30, 2008, CCPR/C/IRL/CO/3, para. 8; Human Rights Committee. Concluding observations on the fourth periodic report of Ireland. 19 August 2014, CCPR/C/IRL/CO/4, para. 7; Human Rights Committee. Concluding observations on the seventh periodic report of Ukraine. August 22, 2013, CCPR/C/IRL/CO/7, para. 10; Committee on the Elimination of Discrimination against Women. Concluding observations of the Committee: The Netherlands. February 5, 2010, CEDAW/C/NLD/CO/5, paras. 46–47; Human Rights Committee. Concluding observations on the fourth periodic report of the Republic of Korea. 3 December 2015, CCPR/C/KOR/CO/4, paras. 14–15; Committee against Torture. Concluding observations on the fifth periodic report of China concerning Hong Kong, (China). 3 February 2016, CAT/C/CHNHKG/CO/5, para. 29(a); Human Rights Council. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. February 1, 2013, A/HRC/22/53, paras. 78, 88; Committee on Economic, Social and Cultural Rights. General Comment No. 22 (2016), on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, E/C.12/GC/22, para. 58; Interagency Statement, Eliminating forced, coercive and otherwise involuntary sterilization, May 2014, and Joint statement of UN and regional human rights mechanisms on the rights of young LGBT and intersex people, May 13, 2015.

¹⁰⁹ IACHR Court. Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 129.

¹¹⁰ Principles on the application of international human rights law in relation to sexual and gender identity, Yogyakarta Principles, March 2007, principle 6.

that differs from the sex assigned at birth is a pathological.¹¹¹ In this sense, these types of requirements or medical certificates contribute to perpetuating the prejudices associated with the binary construct of male and female genders¹¹², represent pathologizing requirements that should not be imposed on the applicants, and are in contravention of the legal procedure for identity recognition protected by the ACHR.

- 82 The requirements and documentation to be submitted by individuals who request a change in their identity data so that it corresponds to their gender identity, pursuant to the principles of equality and non-discrimination, should be the same as those requested to cisgender persons.¹¹³ In the case of the requirement of certifications of good conduct or police records, although these may be requested for a legitimate reason, this requirement may be understood as a disproportionate restriction because it unreasonably transfers to the applicant the State obligation to harmonize the records of personal identity data.¹¹⁴
- 83 In this regard, the I/A Court HR, ha stressed that the protection of third parties and of the public order, which are legitimate purposes, should be guaranteed by legal mechanisms that do not entail, permit, or result in the impairment, hindrance or sacrifice of fundamental human rights.¹¹⁵ Otherwise, the core of the free development of the personality, the right to privacy, the right to personal and sexual identity, the right to health and, consequently, to the dignity of the individual and his or her right to equality and non-discrimination would be completely affected.

• ***On the requirement to submit evidence of surgery and/or hormonal therapy***

- 84 The procedure for name change, change of the photograph and rectification of the sex or gender marker in records and on identity documents cannot require supporting evidence of total or partial surgery, hormonal therapy, sterilization, or bodily changes in order to grant the request or to prove the gender identity in question, because this could be contrary to the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention.¹¹⁷

111 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 130.

112 See Constitutional Court of Colombia. Judgment T-063/7, section 7, No. 7.2.7.

113 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 131.

114 Ibid, para. 132.

115 Idem.

116 Idem.

117 Ibid, para. 146.

- 85 Conditioning the recognition of a transgender person's gender identity to an undesired surgical intervention or sterilization would imply a restriction to the full exercise of several rights, including the rights to privacy (Article 11(2) of the Convention) and to freely choose the options and circumstances that give meaning to existence (Article 7 of the Convention). As well, this would result in relinquishing the full and effective enjoyment of the right to personal integrity.¹¹⁸
- 86 The foregoing could also constitute a violation of the principle of equality and non-discrimination contained in Articles 24 and 1(1) of the Convention because cisgender persons would not need to be subject to such obstacles and harm to their personal integrity in order to enforce their right to identity.¹¹⁹
- 87 Similarly, the Yogyakarta Principles stipulate that “[n]o one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity.”¹²⁰
- 88 When the States, through their civil registries, impose these requirements for the legal recognition of gender identity, they violate rights contemplated in the Convention, and consequently in the Constitution at the domestic level. Furthermore, such identity procedures do not meet the minimum requirements contemplated in the ACHR for the processes of legal recognition of identity.

• The procedure and changes, corrections or amendments to the records must be confidential and identity documents must not reflect changes in gender identity.

- 89 Undesired publicity concerning a change in gender identity, whether already effected or pending, may make the applicant more vulnerable to diverse acts of discrimination against them, their honor or reputation and, ultimately, may represent a major obstacle to the exercise of other human rights.¹²¹ In this regard, the procedures, such as the amendments made in the records and on the identity documents in conformity with the self-perceived gender identity, should not be accessible to the public, and should not appear on the identity document itself.¹²² This is consistent with the close

¹¹⁸ ECHR, A.P., Garçon and Nicot vs. France, Nos. 79885/12, 52471/13, and 52596/13. Judgment of April 6, 2017, para. 131 to 133.

¹¹⁹ I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 146.

¹²⁰ Principles on the application of international human rights law in relation to sexual orientation and gender identity, Yogyakarta Principles, March 2007, Principle 3.

¹²¹ I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 135.

relationship between the right to identity and the right to privacy.¹²³

- 90 The confidential nature of the procedure to change the given name, gender or sex and the photograph to conform to a self-perceived gender identity is consistent with the provision of the Yogyakarta Principles that everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, which includes the right to choose whether to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual relations with others, whether sexual or not.¹²⁴
- 91 In this regard, the Inter-American Juridical Committee (IAJC) indicated that "sensitive data" should be specially protected, because its improper handling or disclosure would represent a deep intrusion upon the personal dignity and honor of the individual and could trigger unlawful or arbitrary discrimination against or result in risk of serious harm to the person.¹²⁵ The IACJ also indicates that personal data should be protected by reasonable and appropriate security safeguards against unauthorized access, loss, destruction, use, modification or disclosure.¹²⁶
- 92 PUICA has established that States must guarantee, through appropriate legislation, the confidentiality of personal information collected by civil registry systems by applying the principles of personal data protection.¹²⁷

• ***The procedure should be prompt and, insofar as possible, cost-free***

- 93 Due to the effects that this type of procedure can have on the persons concerned, the procedures for the change of name and rectification to conform to the self-perceived gender identity must be executed as promptly as possible, within a reasonable timeframe.¹²⁸

122 See, for example, Constitutional Court of Colombia. Judgment T-063/2015. I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 135.

123 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 135.

124 Principles on the application of international human rights law in relation to sexual orientation and gender identity, Yogyakarta Principles, March 2007, Principle 6.

125 OAS, Inter-American Juridical Committee. OAS Principles on Privacy and Personal Data Protection, IAJC/doc.474/15 rev.2, 2015. Principle nine.

126 Ibidem. Principle six

127 OAS, General Assembly of the OAS, Resolution GA/RES. 2362 (XXXVIII-O/08). Inter-American Program for Universal Civil Registry and the "Right to Identity". Objective 2.c

128 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 142.

- 94 With regards to the cost of the procedures, PUICA has indicated they should be cost-free¹²⁹ or at least be the least onerous possible for those concerned, in particular if they are “in poverty and at risk [...] and also taking the gender perspective into account.”¹³⁰
- 95 In this regard, the Court understands that the cost-free nature of this procedure is based on the need to reduce the obstacles, in this case of a financial nature, for the access to the legal recognition of gender identity, as well as the need to avoid creating discriminatory differences in treatment favorable to cisgender persons, who do not need to use such procedures and, consequently, do not incur pecuniary expenses for the recognition of their gender identity. This matter is especially relevant when recalling the context of vulnerability and poverty associated with those unable to obtain recognition of their gender identity.¹³¹
- 96 Regarding the cost-free nature, PUICA emphasizes that the States and corresponding civil registries must take into consideration not only the potential costs and/or taxes imposed on these procedures, but also consider not imposing requirements that imply monetary costs that go beyond the consent of the applicant, such as notarial acts and/or sworn statements before notaries, which cause additional expenses due to the formality required.
- 97 Likewise, with regard to cost-free nature and accessibility of the procedures, PUICA recommends that civil registries consider the costs that individuals may incur if they are required to go to a head office, which tend to be located in larger cities, in order to proceed with the adjustment of their legal identity to their gender identity. Requirements of this nature represent de facto obstacles to comprehensive access to the legal recognition of gender identity, which disproportionately affect persons living in rural areas and/or far from major cities, and also violate the guidelines of accessibility and decentralization to enhance the state's capacity to increase identity registrations according to the gender identity of persons subject to its jurisdiction.

• ***Procedures related to children and adolescents***

- 98 The considerations outlined above related to the right to gender identity are applicable to children who wish to file requests for recognition of their self-perceived gender identity in documents and records,

129 OAS, General Assembly of the OAS, Resolution GA/RES. 2362 (XXXVIII-O/08). Objective 2.d

130 OAS, General Assembly of the OAS, Resolution GA/RES. 2362 (XXXVIII-O/08). Mission.

131 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 144.

¹³²because children and adolescents are entitled to the same rights as adults and to all the rights recognized in the ACHR, including the legal recognition of gender identity.¹³³

99 The I/A Court HR has stated that this right should be understood in keeping with the special measures of protection established at the domestic level pursuant to Article 19 of the Convention. Those measures must be designed based on the principles of the child’s best interests, their progressive autonomy, the right to be heard and to have their opinion be taken into account in any procedure concerning them, the respect for the right to life, survival and development; and the principle of non-discrimination.¹³⁴

100 For its part, the Committee on the Rights of the Child has emphasized that “all adolescents have the rights to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy.”¹³⁵

101 By virtue of the above, States, and consequently their civil registries, must guarantee that identity recognition processes are available, organized and adapted¹³⁶ to meet the specific needs of children and adolescents. This mandate means that the guarantees and special elements of the procedures for legal recognition of gender identity in the case of children and adolescents must be based on the recognition that their participation in a process does not take place under the same conditions as an adult.¹³⁷ Therefore, not only the principle of the best interests of the child must be taken into consideration, but also their right to participation based on their constantly evolving capacities, in accordance with their age, maturity and level of understanding, without any discrimination.¹³⁸

102 Furthermore, it is the responsibility of the civil registries in the region to make sure that children and adolescents who wish to have their gender identity legally recognized can do so without discrimination, in a safe and age-appropriate environment, based solely on their consent and active participation in the process. To this end, civil registries must take into consideration that an eventual

132 Ibid, para. 154.

133 Ibid, para. 149.

134 Ibid, para. 154.

135 United Nations, Committee on the Rights of the Child. General comment No. 20 on the implementation of the rights of the child during adolescence, December 6. 2016, CRC/C/GC/20, par. 34.

136 I/A Court HR V.R.P., V.P.C. And others vs. Nicaragua. Preliminary objections, merits, reparations and costs. Judgment of March 08, 2018. Series C No. 350, para. 158.

137 Idem.

138 Idem.

limitation can only be based on and justified by proportional measures¹³⁹ that aim to protect them, in accordance with the principle of non-discrimination,¹⁴⁰ the principle of the best interests of the child,¹⁴¹ the principle of respect for the right to life, survival and development;¹⁴² and the principle of respect for the child's views in all matters affecting the child, in order to ensure their participation.¹⁴³

• *On the nature of the procedure*

- 103 This document has describe how the I/A Court HR has recognized the fundamental right of all persons to have the sex or gender registered in public records coincide with the sexual and gender identity effectively assumed and experienced by the person.¹⁴⁴ Thus, the procedure for recognition of a person's self-perceived gender identity should consist of a process that everyone has the right to carry out autonomously, and in which the role of the State and society should merely be to recognize and respect this identity, without the intervention of the state authorities becoming an integral part of such recognition.¹⁴⁵ Accordingly, the said procedure may never be a space for external scrutiny and validation of the sexual and gender identity of the person requesting its recognition,¹⁴⁶ since it

139 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 151.

140 Article 2 of the Convention on the Rights of the Child provides for the obligation of States to respect the rights set forth in that instrument and to ensure their application to each child subject to their jurisdiction, without distinction of any kind, which "requires States to actively identify children and groups of children where the recognition and realization of their rights may require the adoption of special measures". Case of L.M. v. Paraguay. Provisional Measures. Resolution of the Inter-American Court of Human Rights of July 1, 2011, para. 14, and Advisory Opinion OC-21/14, para. 66. Also, see United Nations, Committee on the Rights of the Child, General Comment No. 5. "General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)," 27 November 2003, CRC/GC/2003/5, para. 12, and Committee on the Rights of the Child, General Comment No. 6. "Treatment of unaccompanied and separated children outside their country of origin," para. 1.

141 Article 3(1) of the Convention on the Rights of the Child requires that the best interests of the child be a primary consideration in all actions concerning them. Advisory Opinion OC-21/14, para. 66. See also, United Nations, Committee on the Rights of the Child, General Comment No. 5: "General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)," para. 12, and Committee on the Rights of the Child, General Comment No. 14 "on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)," May 29, 2013, CRC/C/CG/14.

142 Article 6 of the Convention on the Rights of the Child recognizes the inherent right of the child to life and the obligation of States parties to ensure to the maximum extent possible the survival and development of the child in the broadest sense, i.e., as a holistic concept encompassing the physical, mental, spiritual, moral, psychological and social development of the child. Advisory Opinion OC-21/14, para. 66. See also, United Nations, Committee on the Rights of the Child, General Comment No. 5. "General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)," para. 12.

143 Article 12 of the Convention on the Rights of the Child establishes the right of the child to express his or her views freely in "all matters affecting [him or her]" and to have those views given due weight in accordance with his or her age and maturity. Advisory Opinion OC-21/14, para. 66; Gelman Vs. Uruguay, para. 129, and Atala Riffo and daughters vs. Chile, Judgment of November 29, 2011, para. 7. See also, United Nations, Committee on the Rights of the Child, General Comment No. 5. "General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)," para. 12, and Committee on the Rights of the Child, General Comment No. 12. "The right of the child to be heard", 20 July 2009, CRC/C/GC/12.

144 IACHR. Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 158.

145 Idem.

should be of a merely declarative nature and limited to verifying only whether the requirements inherent to the manifestation of the applicant's intention are met.¹⁴⁷

- 104 Pursuant to such requirements and conditions, the most appropriate procedures to rectify the name and, if applicable, the reference to the sex/gender and the photograph in the corresponding records and identity documents are those of an administrative or notarial nature, because, in some States, a judicial proceeding may incur in excessive formalities and delays, which characterize this type of proceedings.¹⁴⁸
- 105 In this regard, PUICA has encouraged States to, “in accordance with their domestic laws, promote the cost-free use of administrative procedures in connection with registration processes in order to simplify and decentralize them, while leaving recourse to the judicial system as a last resort.”¹⁴⁹ Accordingly, officials responsible for the procedure can only deny the request, without violating the applicant’s possibility for self-determination and right to privacy, if they notice a defect in the applicant’s free and informed consent.¹⁵⁰

b. Under-registration from the perspective of a lack of legal recognition of gender identity

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- 106 Pursuant to the standards included in OC-24/17, the States have the obligation to guarantee the legal recognition of the gender identity of all persons and thus civil registries have the obligation to enable prompt and non-pathologizing procedures that allow the rectification of records and identity documents in accordance with the self-perceived gender identity of the persons.
- 107 It should be noted that when civil registries do not carry out these rectifications, they contribute to the increase of a de facto under-registration of identity that results in the invisibility of a population that, regardless of their age, is relegated to structural exclusion and the systematic impossibility of accessing and exercising their rights. This is a consequence, among other reasons, of not being supported by their legal documentation. The lack of recognition of gender identity represents

¹⁴⁶ Idem.

¹⁴⁷ Ibid, para. 161.

¹⁴⁸ Ibid, para. 159.

¹⁴⁹ OAS, General Assembly of the OAS, Resolution GA/RES. 2362 (XXXVIII-O/08). Inter-American Program for Universal Civil Registry and the "Right to Identity". Objective 2.d

¹⁵⁰ IACHR. Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 160.

therefore a de facto under-registration, since carrying documents that do not reflect one's identity results in the virtual annulment of one's identity and existence.

- 108 In conclusion, given the condition of legal non-existence faced by persons whose gender identity is not legally recognized, civil registries, in their mission to reduce under-registration, should make available to the entire population procedures that guarantee the legal recognition of gender identity through the rectification of the name, sex/gender and photograph in records and identification documents.

7. THE BINDING NATURE OF OC-24/17 FOR AMERICAN STATES

7. THE BINDING NATURE OFOC-24/17 FOR AMERICAN STATES

- 109 As the final interpreter of the ACHR, the I/A Court HR is empowered to receive inquiries from OAS Member States regarding the interpretation of its provisions or those included in other treaties concerning the protection of human rights in the American States.¹⁵¹ Additionally, the I/A Court HR may issue opinions on the compatibility of the national standards of OAS Member States with the ACHR or any other international human rights instrument.¹⁵²
- 110 In the case of OC-24/17, Costa Rica, as an OAS Member State and a party to the ACHR, consulted the I/A Court HR on the protection afforded by the ACHR to the right to recognition of self-perceived gender identity, as well as the compatibility of its domestic practice with the content and scope of various provisions of the ACHR.¹⁵³ As we have described, the I/A Court HR found that the recognition of self-perceived gender identity is indeed a right protected by the ACHR, and further established a series of standards to be considered when developing procedures to recognize the self-perceived gender identity of any individual.
- 111 In PUICA' experience, some civil registration and identification institutions wonder if the content of OC-24/17 has implications for OAS Member States other than the requesting State, Costa Rica. In this regard, we must recall what until now have been recurring considerations by the I/A Court HR in the use of its powers as a consultative body.
- 112 First, the I/A Court HR understands that the State's obligation to align domestic rules with the content of the ACHR, in accordance with the concept of *conventionality control* explained in previous sections, also extends to the interpretation made by the I/A Court HR in the exercise of its non-contentious or advisory jurisdiction. This is because both functions have the same purpose: "The protection of the fundamental rights of the human being."¹⁵⁴

151 American Convention on Human Rights, 1969, art. 64(1).

152 Ibid, art. 64(2).

153 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 3.

154 I/A Court HR Rights and Guarantees of Children in the Context of Migration and/or in need of International Protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 31.

- 113 However, the implications of an advisory opinion do not extend only to the States parties to the ACHR but are also applicable to any OAS Member State. In the words of the I/A Court HR, “an advisory opinion provides all the organs of the Member States of the OAS, including those that are not parties to the Convention but that have undertaken to respect human rights under the Charter of the OAS (Article 3(l)) and the Inter-American Democratic Charter (Articles 3, 7, 8 and 9), with a source that, by its very nature, also contributes, especially in a preventive manner, to achieving the effective respect and guarantee of human rights.”¹⁵⁵
- 114 Specifically, the advisory work of the I/A Court HR is “a service that the Court is able to provide to all the members of the Inter-American system in order to help them comply with their international commitments.”¹⁵⁶ Therefore, OC-24/17 “constitutes a guideline when deciding matters relating to the respect and guarantee of human rights in the context of the protection of LGBTI persons and thus avoiding possible human rights violations.”
- 115 Moreover, in terms of procedures aimed at legally recognizing self-perceived gender identity, the guidelines established by the Inter-American Court of Human Rights are the first guidelines issued by a body of the Inter-American System for the Protection of Human Rights, and should therefore be considered as complementary to all Member States and all OAS organs in their role of defining and developing public policies to comply with their international obligations fully and effectively in this area.¹⁵⁷
- 116 Therefore, the answer to the question “Are the standards included in OC-24/17 regarding the recognition of gender identity binding?” is *Yes*, just as the other advisory opinions of the I/A Court HR are binding.
- 117 First, the provisions contained in advisory opinions are of a preventive nature, so they have the practical consequence of guiding States in their behavior in accordance with their international obligations, so that if any authority deviates from the interpretations made by the I/A Court HR, it could incur human rights violations.¹⁵⁸

155 *Idem.*

156 I/A Court HR Gender identity, and equality and non-discrimination of same-sex couples. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 21.

157 See also, on procedures aimed at legally recognizing of self-perceived gender identity: United Nations, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, 12 July 2018, A/73/152.

158 ZELADA, Carlos. ¿Son vinculantes las opiniones consultivas de la Corte Interamericana de Derechos Humanos?: Una propuesta de reforma para un problema de antaño, Presentation by Silvia Serrano Guzmán, Perú, 2020, p. 12.

- 118 Second, and intricately connected with the previous point, the answer is *Yes* because advisory opinions are the direct interpretation of international treaties that are binding for signatory States.¹⁵⁹ That is to say, it would be absurd to think that if a State is obliged to comply with an international treaty in good faith, it is not obliged to respect the interpretations derived from it. Especially in the case of an interpretation made by the I/A Court HR, as the final authorized interpreter of the ACHR.
- 119 Third, although an advisory opinion lacks the formality of a contentious case, inasmuch as (1) it does not raise the specific case of a person or persons whose rights have allegedly been violated, (2) its structure lacks resolution points, and (3) it does not contemplate a supervisory mechanism, the I/A Court HR's interpretation has the same result: establishing the scope and content of the international obligations of the States parties.¹⁶⁰
- 120 And fourth, because, as repeatedly explained in this document, State authorities have the obligation to verify the compatibility of their national rules and practices with the content of international human rights instruments and their interpretation.¹⁶¹ If this conventionality control excludes the provisions of the advisory opinions of the I/A Court HR, the compatibility exercise would be considered incomplete.

159 Ibid, page 12–13.

160 Idem.

161 ZELADA, Carlos. ¿Son vinculantes las opiniones consultivas de la Corte Interamericana de Derechos Humanos?: Una propuesta de reforma para un problema de antaño, Perú, 2020, pp. 97–100.

8. CHECKLIST TO VERIFY COMPLIANCE WITH OC- 24 STANDARDS REGARDING THE LEGAL RECOGNITION OF GENDER IDENTITY

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- 121 By virtue of the considerations outlined in the previous section, the arguments of the I/A Court HR provide guidelines on how the standards related to the legal recognition of gender identity should be regulated and implemented. Non-compliance with these guidelines may imply violations of various rights protected by the American Convention.
- 122 The following checklist includes the requirements to guarantee the legal recognition of gender identity under the standards of the Inter-American System. As a personal exercise, we encourage readers to evaluate the recognition of gender identity in their jurisdiction of interest individually, and then compare it with the standards established in OC-24/17. In all cases, compliance with each of the guidelines listed above is a positive factor in the practice analyzed.
- 123 Based on the checklist below, PUICA has classified the practices of 21 jurisdictions in the Americas in the document “Overview of the legal recognition of gender identity in the Americas”.

1. The procedure available is formal and administrative by nature.

1.1 The procedure must be completed before the civil registry or identification authorities.

1.2 The procedure does not require the participation of jurisdictional authorities to rectify any constituent component of gender identity (photograph, name, or sex/gender marker).

1.3 The procedure is administrative in nature for all populations regardless of age, marital status, or any other aspect.

1.4. Applicants do not need legal representation to carry out the available procedure.

2. The available procedure enables the full rectification of the photograph, name and sex/gender markers on the registration and identification documents.

The procedure allows the photograph to be taken according to the applicant's gender expression.

The procedure enables the rectification of the name assigned at birth according to the individual's self-perceived gender identity.

The procedure enables the rectification of the sex assigned at birth according to the individual's self-perceived gender identity.

3. The only requirement of the procedure available is the applicant's consent, and it does not include unreasonable, invasive or pathologizing requirements.

The procedure does not require the submission of proof of address.

The procedure does not require the participation of third parties as witnesses.

The procedure does not require the submission of documents to prove the adherence to a gender identity for a given period.

The procedure is not subject to the applicant's marital status, nor does it require submitting marital status certificates.

The procedure is not subject to the applicant being a parent, nor does it require submitting certificates of descent.

The procedure does not require the submission of a criminal record check.

The procedure does not require the submission of a psychological or psychiatric evaluation.

The procedure does not require the submission of a medical evaluation.

The procedure does not require the applicant to undergo hormonal therapy or surgery.

The regulation of the procedure does not include additional requirements to those contemplated in the law.

4. The available procedure is expedited.

The procedure requires the applicant to appear on only one occasion.

The applicant can get their birth certificate and identity card in less than 60 days.¹⁶⁶

5. The procedure is free of charge.

The procedure does not require the submission of certified copies of registration or identification that require the payment of fees or costs.

The procedure does not require the submission of notarial certifications or other notarial documents that require the payment of fees or costs.

The procedure does not require the payment of fees or costs.

Obtaining the first copy of the rectified birth certificate does not require the payment of fees or costs.

Obtaining the rectified identification document does not require the payment of fees or costs.

6. The procedure available is of the highest accessibility standard.

The procedure may be started outside the capital city or subnational entity.

The procedure may be started in a place other than the applicant's place of birth.

The civil registry and/or identification authority has mobile office operations to bring the procedure closer to places far from its central and regional offices.

¹⁶⁶ According to the practices surveyed by PUICA in the document "Overview of the legal recognition of gender identity in the Americas", the average time for applicants to have their birth certificate and identification document rectified in various jurisdictions ranges between 20 and 60 days, so it is estimated that a longer duration exceeds the reasonably expected time.

7. The procedure available is of the highest confidentiality standard.

The procedure does not require the publication of any of its stages.

The procedure does not require third parties (witnesses, health professionals, etc.).

The procedure safeguards or protects the original registration documents, which are not accessible except by court order or at the applicant's request.

The rectified documents do not include any sign that might indicate the prior completion of a gender identity recognition process (marginal notes, new fields, changes in place or date of birth).

Communications between state agencies regarding the gender identity recognition procedure are confidential.

Once the procedure is complete, all documents related to the gender identity recognition procedure are safeguarded or kept confidential.

8. The available procedure leads to approving the update of all the applicant's public and private documents.

The procedure leads to approving the update of any registry record that refers to the applicant's identity.

The authority responsible for resolving the procedure notifies other authorities of its own accord of the need to rectify any documentation that refers to the applicant's identity.

The notified authorities are required by the applicable regulations to rectify the documents within their jurisdiction.

The notified authorities have a fixed period to rectify the documents within their jurisdiction.

The applicant may request that private entities be notified of the rectification of their documents.

9. The available procedure is accessible to children and adolescents.

Children and adolescents can be recognized in their gender identity.

The procedure does not establish age limits for recognizing the gender identity of children and adolescents.

The procedure for recognizing the gender identity of children and adolescents is not conditioned to the mandatory consent of those who exercise parental authority or have legal custody.

The procedure for recognizing the gender identity of children and adolescents is not disproportionately different from the procedure available to adults.

The procedure for recognizing the gender identity of children and adolescents guarantees their participation in accordance with the principle of progressive capacity.

9. REFERENCE PRACTICES

9.

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- 124 Below are some practices from across the continent that are presented as a reference for compliance with OC-24/17 standards. Furthermore, to gain a better understanding of how this right is guaranteed in the continent, we recommend reading the document “Overview of the legal recognition of gender identity in the Americas”, which presents a comparative analysis of the practices for recognizing gender identity in 21 jurisdictions in the region in light of the standards of the Inter-American System.

a. Argentina: National rules aligned with OC-24/17 standards

- 125 Argentine law provides for an administrative procedure for the full rectification of the photograph, name and sex/gender marker included in the birth certificate and the national identity card, in accordance with the self-perceived gender identity. The procedure is fast, cost-free, and free of unreasonable, invasive and pathologizing requirements
- 126 Some provinces allow individuals to file an application even if their birth was not originally registered there. There is no explicit provision or prohibition in this regard, nor is there a mandatory procedure for all jurisdictions. There are differences because the rectification process requires access to the original birth certificate, which is in the custody of the civil registry of the province where the birth was originally registered. However, the civil registries of some provinces and of the Autonomous City of Buenos Aires accept applications from persons whose birth was originally registered in another jurisdiction. Furthermore, alternatives are sought through communications between registry authorities to rectify the birth certificate without requiring the applicant to travel to their place of birth.
- 127 Once the procedure is complete, both the rectified certificate and the identification data are kept under strict confidentiality. The rectified certificates will only be accessible to their holders or with a court order. The new certificate must not include any references to the Gender Identity Law, nor to any local regulations that would induce to infer that a rectification has been made.
- 128 The procedure for the recognition of gender identity is available to all Argentine persons regardless of age, including children and adolescents, although the interpretation of the rules, mainly in the case of persons under 12 years of age, remains a national challenge. The recognition procedure for persons

under 18 years of age is the reference cited by the I/A Court HR in OC-24/17.

- 129 In accordance with the information provided by the National Registry of Persons (*Registro Nacional de las Personas*–RENAPER), a cross-cutting perspective has been adopted to bring the procedure closer to nationals residing abroad, migrants and refugees, as well as persons deprived of liberty. However, according to the Report of the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation or gender identity on his mission to Argentina, including a cross-cutting perspective remains a challenge regarding other population sectors with non-normative gender identities in the country.
- 130 A further challenge remains: having a practice that makes it possible to standardize all the registry and identification documentation of the applicants through a single procedure, in accordance with the requirement of integrality under OC-24/17.

b. Bolivia: The most advanced rules for approving the update of identity documents

- 131 Law No 807 on Gender Identity and the Regulation for the Change of Personal Name and Sex Data in Birth Certificates of Transsexual and Transgender Persons in Bolivia includes a list of institutions to be notified once the gender identity recognition procedure is complete. According to the text of both provisions, the notified authorities have 15 or 30 days, depending on the case, to rectify the documents and records under their jurisdiction that refer to the applicant's identity. Furthermore, the law and the regulations allow applicants to request that other institutions be notified in addition to mandating any public or private institution to rectify the personal data of the interested parties upon simple request and presentation of their birth certificate or rectified identity card.

c. Canada: A pioneer in recognizing non-binary gender identities

- 132 The “Policy Direction to Modernize the Government of Canada’s Sex and Gender Information Practices” recommends that government institutions and agencies update their practices and databases to include at least three gender marker options: “male”, “female” and “another gender”. If more detailed information is required, they can leave an open response field for the person to specify their gender. This third option would be reflected in the documents with the “X” marker for those who do not identify within the normative woman/female-man/male binary spectrum.

d. Colombia: An example of collaboration with transgender civil society and of the recognition of intersex persons

- 133 Since February 2018, the District Civil Registrar’s Office in Bogota has been jointly coordinating with the civil society organization *Grupo de Acción y Apoyo a Personas Trans* (Action and Support Group for Trans Persons, Fundación GAAT) the implementation of “Transidentifiquémonos,” a project that provides free support, advice and accompaniment to trans people in the gender identity recognition process.
- 134 Also, it is essential to highlight the work done by the National Registry to recognize the gender identity of intersex persons. Pursuant to the decision of the Constitutional Court in its ruling T-450A, when an intersex person is born, this characteristic is not recorded in the corresponding sex/gender box of the birth registration. Instead, the sex/gender indicated by the parents, or whoever acts on their behalf, is recorded. The person’s “certificate of live birth” is included in the book of certificates, which is part of the folio of the civil birth registry but remains inaccessible to the public thanks to strict confidentiality issues.
- 135 Subsequently, the initial registration may be replaced, if required, in two cases. First, when intersex persons are mature enough to decide to rectify the sex/gender component of their original birth registration and, if required, the name component. In this case, there is no need to exhaust the judicial process or to process a public deed since it is an action to recognize their self-perceived gender identity. The second case entails having a legal representative submit a written request, including a written note issued by an interdisciplinary group of specialists who account for the gender identity of the person represented. The application has the effect of replacing the original registration and does not require a public deed.
- 136 New folios are used when replacing the birth registration of an intersex person. In any case, the name on the certificate of live birth shall be retained as the antecedent document. In order to maintain the confidentiality of the original registration, the superseded entry is annulled, and no reference is made to the new folio, nor to any other additional data.

e. Costa Rica: Reference on staff training on sexual and gender diversity

- 137 In 2008, the Gender Unit was established within the Supreme Electoral Tribunal (TSE for its Spanish acronym). This unit is in charge of following up on the Gender Policy and on the Policy on Non-Discrimination based on Sexual Orientation and Gender Identity approved by the TSE in 2016. It receives a budget to translate these policies into actions, mainly related to staff training and promoting an institutional culture of dignified and equal treatment.
- 138 The non-discrimination policy includes four lines of work: awareness raising, training and education of institutional staff; developing and implementing protocols and mechanisms to ensure respectful treatment; reviewing administrative, regulatory, procedural, and operational measures; and promoting affirmative actions.
- 139 The Gender Unit coordinates this policy, together with the Commission on Non-discrimination based on Sexual Orientation and Gender Identity, which oversees a comprehensive analysis of the potential scope of Advisory Opinion 24/17 and its applicability to administrative processes and institutional regulations, issuing technical criteria to guide management in making decisions related to non-discrimination. An action plan was approved for the 2019-2024 period to translate the non-discrimination policy into actions.
- 140 The unit has organized several training initiatives within the institution, emphasizing the respectful and equal treatment of LGBTI people. The training sessions focus on human rights, international human rights instruments, national regulations, concepts of human sexuality, discrimination based on sexual orientation, gender expression and gender identity; an analysis of Advisory Opinion 24/2017, the reform of the Civil Registry Regulations and Identity Card Regulations, the procedure for name rectification of trans persons, and the guidelines for the respectful treatment of LGBTI persons. As of the second half of 2016, a permanent awareness and training action was included in the Institutional Training Plan called “Basic workshop on non-discrimination based on sexual orientation and gender identity”.
- 141 One of the actions promoted by the Gender Unit is the “Guideline on User Services: Identification Process for Trans Persons”, which was approved in 2017 in response to multiple documented cases of discriminatory treatment of trans persons seeking civil registry services. The “Guidelines for Respectful and Equal Treatment” were also approved in 2019. They compile mandatory criteria for respectful and equal treatment of LGBTI persons, both for tribunal officials and for those requesting services.

f. Ecuador: The most expedited procedure in the region

- 142 Ecuador has the most expedited procedure in the region: applicants can have their identity card updated on the same day of processing, although they must wait approximately eight working days to obtain a certified copy of their birth certificate with the rectified name. Although Ecuador does not have an comprehensive recognition procedure, if the procedure were to be reformed, the processing time would remain the same as it would require the same internal processes.

g. Mexico: Efforts to standardize criteria in a federal republic

- 143 The General Directorate of RENAPO presented a “Draft Administrative Procedure for the Restriction of Access and Publication of Birth Registration and Birth Certificates due to Modifications of Gender Identity Recognition” in 2018 aimed at establishing a nationwide mechanism that allows local civil registry authorities to keep original birth certificates confidential as a result of the recognition of gender identity in a different federal entity.
- 144 To date, this document presented by the General Directorate of RENAPO is taken as a model by several national registration authorities to safeguard the original certificate. However, as at least 20 officers leading the general directorates of the civil registries in the country have changed since 2018, the General Directorate of RENAPO believes that a new agreement should be created so it can be adopted nationwide.
- 145 PUICA was invited to assess the Mexican reality in terms of gender identity recognition in October 2019 and made recommendations to improve the national agreement in the “Report of the Inter-American Cooperation Mechanism for Effective Public Management (MECIGEP) Requested by Mexico—Comprehensive Recognition of Gender Identity.”

h. Michoacán: Successful experience in the context of international cooperation

- 146 Since the “Mexico–Central America Subregional Workshop on the Right to Identity. Gender Recognition in the Civil Registry and Identity Documents,” organized by PUICA in Mexico City in August 2019, the General Directorate of the Civil Registry of the State of Michoacán has promoted several changes in its policies and procedures related to the legal recognition of gender identity.
- 147 The General Directorate of the Civil Registry sent a proposal to the State Governor to reform the local Finance Law in order to make the procedure for recognizing gender identity free of charge. This reform was approved in December 2019. Furthermore, PUICA received a request for technical assistance from the General Directorate of the Civil Registry of the State of Michoacán to develop a document that would include a training manual, attention protocol and manual for the procedure for recognizing gender identity which will be published in June 2020.
- 148 Michoacán also stands out for the variety of cross-cutting procedures implemented, as it has facilitated the efforts of coordination with sex workers and with Michoacanians residing outside of Mexico to enable them to rectify their registration documents.

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i. San Luis Potosí: Conventionality control in implementing an executive decree

- 149 The Potosi transgender civil society has several demands, and a legislative reform would be difficult to achieve through the State Congress. Therefore, the General Directorate of the Civil Registry coordinated an integrative strategy, together with civil society organizations based in the state, to develop a proposal to amend the Regulations of the Civil Registry Law that would enable the implementation of a procedure for the legal recognition of gender identity.
- 150 Following the approval of the proposal sent to the State Governor in May 2019, the amendment that adds Chapter Two to Title Seven of the State Civil Registry Regulations entitled “On the Modification of Personal Data in the Civil Records according to Self-Perceived Gender Identity” was published in the Official Gazette of the State Government of San Luis Potosí. As of November 2019, 85 people have been recognized in their self-perceived gender identity.

- 151 The procedure adopted by the State of San Luis Potosí inspired the State of Jalisco to request a MECIGEP round focused on potentially reforming its civil registry regulations.

j. Uruguay: Reparations for victims of institutional violence

- 152 In addition to including the gender identity variable in all official statistical information systems and taking actions to ensure access to the rights to education, work, health, housing and culture; Uruguay's Law No. 19.684 on Trans Persons provides for the creation of a system of reparations for trans persons born before 1975 to compensate the victims of the systematic violence documented in the country until the mid-1990s. These persons will be entitled to receive a monthly and lifelong reparation pension.

