



# The role of parliamentarians in guaranteeing the right to gender identity

## Context in the Americas

TRANSIT's report by the United Nations Development Program and other organizations defines the concept of **gender identity** as "a person's internal, deeply-felt sense of being male, female, an alternative gender or a combination of genders," while **trans people** are those "whose gender identity is different from the sex they were assigned at birth."

The report adds that "trans is an umbrella term that describes a wide variety of cross-gender behaviors and identities. It is not a diagnostic term and does not imply a medical or psychological condition. This term should be avoided as a noun: a person is not 'a trans;' they may be a trans person. It is important to understand that not all people who are considered trans from an outsider's perspective in fact identify as trans, nor will they necessarily use this term to describe themselves. In many countries there are indigenous terms that describe similar cross-gender identities."

The report of the Inter-American Commission on Human Rights (IACHR) on violence against LGBTI persons, issued in November 2015, places special emphasis on the **violence faced by trans people, particularly trans women**. The majority of trans women are immersed in a cycle of violence, discrimination and criminalization that usually begins at an early age, due to the exclusion and violence suffered in their homes, communities and

educational centers. This situation is compounded by an absence, in most of the countries of the Americas, of legal or administrative provisions that recognize their gender identity.

The report also indicates that life expectancy of trans women in the region is between 30 and 35 years of age. The IACHR reported that during a period of fifteen months (between January 2013 and March 2014) at least 594 LGBT persons, or perceived as such, were killed in attacks apparently related to the perception of their sexual orientation or their gender identity and expression. Of these victims, 282 were trans women or trans people with female gender expression.

## Why is it important for parliamentarians to guarantee the right to a gender identity?

Parliamentarians have a fundamental role in efforts to **promote and protect the human rights of all individuals** through the effective execution of their legislative functions, their oversight of government policies, the approval of budget allocations and their leadership as democratically elected representatives by their communities.

The American Convention on Human Rights establishes in Article 1 that: "The States Parties to this Convention undertake to respect the rights

and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, **without any discrimination** for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.” As the Inter-American Court of Human Rights has continuously reiterated in its jurisprudence, sexual orientation and gender identity are social conditions protected by the American Convention.

Article 2 of the American Convention, which must be read in connection with Article 1, states that: “Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.”

Parliamentarians, therefore have a fundamental role to play in ensuring that their States adopt the **necessary legislative measures** to give effect to the rights and freedoms recognized in international law.

## What actions can parliamentarians take to guarantee the right to gender identity?

Several PGA members have supported in their national parliaments the **enactment of gender identity laws** that establish simple and transparent procedures for trans people to change their name and sex/gender in official documents and records to reflect their self-perceived gender identity. Bills on this matter are currently under parliamentary

discussions in the Parliaments of Costa Rica and Chile.

In Costa Rica, Mr. Ronny Monge, MP promoted and voted in favor of the project of “Law for the Recognition of Rights to Gender Identity and Equality before the Law,” which was approved in June 2017 in the Human Rights Committee of the Legislative Assembly. Mr. Monge has affirmed: “I hope that this project of law is soon approved by the plenary of the Legislative Assembly of Costa Rica and becomes law, and that similar laws that protect the right to gender identity are implemented in the rest of the countries in the region.” In Chile, Mr. Tucapel Jiménez, MP, member of PGA’s Board, is recognized as one of the main allies of LGBTI civil society organizations in the final approval of the gender identity bill in this country, which was adopted by the Chamber of Deputies of Chile in January 2018.

In addition to advancing gender identity laws that establish procedures for the change of name and sex/gender, parliamentarians can promote the right to gender identity **in their legislative function** in the following ways:

- Enacting general laws that specifically prohibit discrimination based on gender identity.
- Repealing the laws that criminalize, if applicable, trans people for their identity or gender expression.
- Adopting laws against hate crimes that protect all people from violence, including those attacked because of their real or perceived gender identity.

Likewise, parliamentarians can promote equality and inclusion of trans people and respect for their gender identity by exercising other functions:

- **In their representative function:** reaching out to LGBTI civil society and engaging in dialogue and collaboration with them, supporting LGBTI Pride marches and spreading positive public messages about trans people.
- **In their oversight role:** ensuring that national budgets allocate adequate resources to programs and policies that respond to the needs of trans people and monitoring the implementation of government plans and policies that promote equality and non-discrimination.

Other examples of actions that parliamentarians can take to promote the rights of LGBTI people can be consulted at: [pgaction.org/inclusion/take-action/](http://pgaction.org/inclusion/take-action/)

## The right to gender identity in the Inter-American Human Rights System

On January 9, 2018, the Inter-American Court of Human Rights issued an [Advisory Opinion](#) on the protection of the rights of persons of the same sex and the right to gender identity, in response to a [request](#) for clarification from the State of Costa Rica on the interpretation of the American Convention on Human Rights in relation to these two aspects. In its decision, the Court reiterated its continuous jurisprudence that **sexual orientation and gender identity are categories protected by the American Convention**.

The Court defined gender identity as “the internal and individual experience of gender as each person feels it, which may or may not correspond to the sex assigned at birth.” The right to gender identity is linked to the concept of freedom and the possibility of every human being to self-determine and freely choose the options and circumstances that give

meaning to their existence, according to their own choices and convictions. The Court affirmed that “the recognition of gender identity by the State is of vital importance to guarantee the full enjoyment of the human rights of trans people.”

In view of the above, the Court considered that **the change of name, the adequacy of the image and the rectification to the mention of sex or gender in the registers and in the identity documents, for these to be consistent with the self-perceived gender identity, is a right protected by the American Convention**.

**As a consequence, the States Parties to the Convention are obliged to recognize, regulate and establish the appropriate procedures for such purposes.**

Moreover, the Court specified the **minimum conditions** to which these internal procedures must adapt:

- They must be intended to reflect self-perceived gender identity.
- They must be based on free and informed consent.
- They must not demand medical or psychological certifications that are unreasonable or pathologizing.
- They must be confidential, protect personal data and not reflect changes in gender identity.
- They should be expeditious and tend to be free as far as possible.
- They must not require the accreditation of surgical and/or hormonal procedures.

The Court concluded that administrative procedures

are those that best meet these requirements and stated that such procedure does not necessarily have to be regulated by law.

In addition, the Court recalled that, in accordance with international law, **the public authorities of the States Parties to the American Convention are obliged to apply the standards established in the Advisory Opinion.**

The Inter-American Commission on Human Rights (IACHR) had stated since 2012: "... the Commission observes that the right to gender identity of trans people is essential for the exercise of their human rights. The IACHR urges States to take the necessary measures in all areas of public intervention to guarantee the full enjoyment and exercise of the human rights of trans people, without any discrimination. For this, it is essential, among other measures, the adoption of public policies and protocols that include a perspective that takes into account the gender identity of trans people and their specific needs."

## The right to gender identity in international human rights law

■ The **right to equality and non-discrimination** are fundamental principles of human rights, set out in the Charter of the United Nations, the Universal Declaration of Human Rights and other international human rights treaties such as the International Covenant on Civil and Political Rights. Article 1 of the Universal Declaration of Human Rights leaves no room for doubt: "All human beings are born free and equal in dignity and rights." Article 2 (1) of the International Covenant on Civil and Political Rights states: "Each State Party to the present Covenant undertakes to respect and to ensure to all

### ADVANCES IN THE RECOGNITION OF THE RIGHT TO GENDER IDENTITY IN THE AMERICAS

- **Argentina, Colombia and Uruguay** guarantee the right of every person to the recognition of their gender identity, to the free development of their person according to their gender identity and to be treated according to their gender identity, particularly, to be identified in that way in official documents.
- Countries in the region such as **Chile and Costa Rica** are currently in the process of legislative discussions of gender identity bills.
- The Supreme Court of Justice of **Mexico** recognizes that "people have the right to change their name and sex in their official documents when those assigned at birth do not reflect what they consider to be their identity."

individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

■ The competent bodies in relation to the human rights treaties of the United Nations have confirmed that **sexual orientation and gender identity are included among the prohibited grounds of discrimination under international**

**human rights law.** For example, the Committee of the Covenant on Civil and Political Rights has referred to sexual orientation and gender identity as characteristics of people who are not modifiable without detriment to their identity.

■ Principle 3 of the *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* states that: “Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom” and that “States shall take all necessary legislative, administrative and other measures to ensure that 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.”