

**AMICUS CURIAE BRIEF OF AMNESTY INTERNATIONAL  
IN THE SUPREME COURT OF KOREA  
ON LEGAL GENDER RECOGNITION (CASE NO. 2020SEU616)**

<b>I. INTRODUCTION</b>	<b>3</b>
<b>II. THE INTEREST OF AMNESTY INTERNATIONAL IN THE CURRENT CASE</b>	<b>3</b>
<b>III. AMNESTY INTERNATIONAL'S SUBMISSIONS</b>	<b>4</b>
A. SUMMARY OF SUBMISSIONS MADE BY AMNESTY INTERNATIONAL	4
B. THE LEGAL BASIS OF THE RIGHT TO LEGAL GENDER RECOGNITION	5
Right to equality and non-discrimination	6
Right to self-determination	7
Right to Privacy	8
The rights to marry, to found a family and the right to family life and the Best Interests of the Child	8
C. SUMMARY AND ANALYSIS OF THE CURRENT REQUIREMENTS FOR LEGAL GENDER RECOGNITION	8
a) THE CLAIM OF PROTECTING THE BEST INTEREST OF THE CHILD	10
b) IMPACT ON THE RIGHT TO MARRY, TO FOUND A FAMILY AND THE RIGHT TO FAMILY LIFE	12
c) IMPACT ON THE RIGHT TO PRIVACY AND RECOGNITION BEFORE THE LAW	13
d) STATES ARE INCREASINGLY REMOVING DISPROPORTIONATE AND ABUSIVE BARRIERS TO LEGAL GENDER RECOGNITION	13
(1) LEGAL GENDER RECOGNITION AROUND THE WORLD	13
(2) SELF-DETERMINATION MODEL	15
(3) REGIONAL JURISDICTIONS	17
Council of Europe	17
Organization of American States	17
(4) GOOD PRACTICE: ARGENTINA	18
<b>IV. CONCLUSION</b>	<b>18</b>

## I. INTRODUCTION

1. Amnesty International hereby submits an amicus curiae brief in the Supreme Court of Korea case file number 2020Seu616.
2. As Amnesty International understands it, on 19 February 2020 the appeal by applicant “X”, a transgender woman born in 1985, against an earlier rejection to have her legal gender recognized was dismissed by the Seoul Family Court because she has children of under the age of 19. The Seoul Family Court appellate ruling stated that the recognition of a legal change in X’s gender would significantly and negatively affect the welfare of her children as they were under 19 years of age. As a result, the Family Court dismissed her case and upheld a ruling by the Court of First Instance in file number (2019hogi30084). The applicant now appeals against the Seoul Family Court’s decision to the Supreme Court of Korea.
3. This amicus curiae brief is focused on providing the Supreme Court with the applicable international and regional law and standards that Amnesty International considers to be of use in answering the question whether a public authority can reject an application for legal gender recognition on the grounds that a transgender person is a parent to a minor child, that is, in Korea a person below the age of 19.<sup>1</sup>
4. The brief will also draw on regional case law, including from the Inter-American Court of Human Rights, the European Court of Human Rights as well as national jurisprudence by courts in South Africa and other domestic developments applicable to the rights and legal issues to be determined by Court.
5. Having considered the papers filed by litigants in this case, Amnesty International is of the view that it is well-placed to assist this Court in its determination of the legal issues that arise in this matter. In submitting this brief, Amnesty International respectfully requests the Court to consider the submissions made in its determination of the present case.

## II. THE INTEREST OF AMNESTY INTERNATIONAL IN THE CURRENT CASE

6. Amnesty International is a global movement of more than ten million members, activists and supporters in more than 150 countries and territories, including the Republic of Korea. Amnesty International campaigns for a world in which all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments are enjoyed by all. Amnesty International works independently and impartially to promote respect for human rights. The organization is independent of any government, political group, ideology, economic interest, or religion, and it is funded mainly by its members, as well as by public donations. Amnesty International monitors legal practices in countries throughout the world for compliance with international human rights law, and it works to end grave abuses of human rights and to demand justice for those whose rights have been violated.
7. Amnesty International has extensive experience in submitting amicus curiae briefs and other third-party submissions in international and national courts to assist them in resolving fundamental questions of international human rights law. Over the course of its existence Amnesty International has been granted permission to make such submissions including the Supreme Court of Canada, the United States Supreme Court, the National Supreme Court of Justice of Mexico, the Bangkok Civil Court, the then Appellate Committee of the House of Lords in the United Kingdom, the Constitutional Court of South Africa, the Special Court for Sierra Leone, the Economic Community of West African States Court of Justice, the African

---

<sup>1</sup> The term “minor children” is used here to denote a person who has not yet reached the age of majority in accordance with the definition employed by the Court as prescribed in domestic law per Article 4 of the Civil Act, which states that: “Majority is attained by a person upon the completion of 19 years of age.”

Court of Justice and Human Rights, the European Court of Human Rights, the Court of Justice of the European Union and the International Criminal Court. Specifically in this Court, Amnesty International has submitted an amicus curiae ahead of the 1 November 2018 ruling recognizing the right to conscientious objection to military service after the Supreme Court of Korea formally requested a submission from Amnesty International Korea.

8. Amnesty International has conducted some work on legal recognition and transgender rights in the Republic of Korea, in other jurisdictions and more broadly at a global level. Amnesty International believes that, for transgender people, official identity documents reflecting their gender identity are vitally important for the enjoyment of their human rights. As discussed later in this brief, such official documents are not only crucial when travelling but also for everyday life; depending on the specific country, individuals may be asked to produce an official document when they enroll in school, apply for a job, access a public library or open a bank account.
9. Generally, as part of its human rights campaigning, Amnesty International works against discrimination, harassment and violence against individuals with, or perceived, diverse sexual orientation, gender identity, expression or sex characteristics (SOGIESC), such as lesbian, gay, bisexual, transgender or intersex (LGBTI). Amnesty International is committed to defending and promoting the human rights of LGBTI persons. This work has included:
  - 9.1 International advocacy at the United Nations (UN) Human Rights Council and various country submissions such as at UN treaty bodies [such as the Committee on Economic, Social and Cultural rights (CESCR), Committee against Torture (CAT), Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC)]. Amnesty International was one of the organizations which contributed to the 2006 drafting of the Yogyakarta Principles, a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity.
  - 9.2 Regionally, in 2017, Amnesty International became a member of ILGA-Asia, the Asian chapter of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) World. ILGA World is a worldwide federation of 1837 member organizations from 169 countries campaigned for lesbian, gay, bisexual, trans and intersex rights. ILGA World has campaigned for these rights since 1978.
  - 9.3 At various domestic levels, Amnesty international has campaigned for marriage equality, for example in Ireland, Australia and Taiwan. Amnesty has also campaigned for procedures for legal gender recognition which comply with, and do not violate the rights of transgender people, for example in Finland, Scotland and Hong Kong.
  - 9.4 Finally, Amnesty International published a report in 2017 on the rights of individuals born with variations of sex characteristics, including intersex people, and also published a report on violence and discrimination against LGBTI people in the South Korean military in 2019.
10. In sum Amnesty International has a strong and continuing interest in the promotion and protection of human rights, particularly in the context of LGBTI people.

### **III. AMNESTY INTERNATIONAL'S SUBMISSIONS**

#### **A. SUMMARY OF SUBMISSIONS MADE BY AMNESTY INTERNATIONAL**

11. This brief submits that the requirements attached to legal gender recognition in the Republic of Korea in the Supreme Court guidelines are inconsistent with human rights as guaranteed

under the Constitution of the Republic of Korea (Articles 11(1), 17 and 36(1)). The brief further submits that such guidelines are also inconsistent with international human rights law and standards. This submission is based largely on the position that the right to gender recognition is established in domestic and international law and is derived from the rights to self-determination and privacy. Amnesty International also submits that international human rights law and standards sets out aims and principles to be applied to improving access to legal gender recognition.

12. Amnesty International accordingly is of the view that the imposition of requirements that cause abuse and/or disproportionate burdens of transgender persons seeking legal gender recognition must be avoided. In our view this includes requirements with a prohibition of gender rectification if a transgender individual has minor children. Amnesty International considers such a requirement a violation of the rights to privacy, to a family life and non-discrimination.
13. Amnesty International further submits that international state practice demonstrates that states are increasingly removing-disproportionate or abusive barriers to legal gender recognition as a way to comply with both their domestic laws and international laws and standards.
14. Our submissions there structured as following:
  - 14.1 First, we will discuss the legal framework of the right to legal gender recognition;
  - 14.2 Second, we discuss current requirements for legal gender recognition as set out in the in the Republic of Korea in the Supreme Court Guidelines;
  - 14.3 Third, we discuss the various ways that the existing requirement not to have minor children in the context of legal gender recognition violates international human rights law and standards;
  - 14.4 Fourth, we highlight how states are increasingly removing unnecessary disproportionate and abusive barriers to legal gender recognition.

## **B. THE LEGAL BASIS OF THE RIGHT TO LEGAL GENDER RECOGNITION**

15. The International Covenant on Civil and Political Rights (the “ICCPR”) and the Convention on the Rights of the Child (the “CRC”) have been ratified by the Republic of Korea. Under Article 6(1) of the Constitution of the Republic of Korea, international law has the same effect as the domestic laws: Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea. This means that all authorities in Korea are under an obligation to ensure and protect the rights enshrined by the ICCPR and the CRC, as well as other international human rights conventions. These obligations are binding on the state as a whole, including on all branches of government – the executive, the legislative and judiciary.
16. Amnesty International submits that international human rights law has a well-established framework mandating the respect for gender identity. Such recognition of one’s gender identity is linked to the right to equal recognition before the law entrenched in Article 6 of the Universal Declaration of Human Rights. Similarly, Article 16 of the International Covenant on Civil and Political Rights provides that *“Everyone shall have the right to recognition everywhere as a person before the law.”* In addition, in 2016, the United Nations Human Rights Council appointed an Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity (‘UN SOGI Expert’). The UN SOGI Expert has explained that the lack of legal recognition negates the identity of the concerned persons to such an extent that it provokes what can be described as a

fundamental rupture of State obligations.<sup>2</sup> Further, Amnesty International submits that internationally protected human rights are applicable to gender identity as acknowledged by the Yogyakarta Principles, which crystallize the current status of human rights law in relation to gender identity and sexual orientation.

17. We also note that although there is no international treaty that is focused exclusively on the rights of LGBTI persons specifically, the Yogyakarta Principles, which were developed in 2006 by lawyers, scholars, NGO representatives and other experts, are a crystallization of existing international human rights law as it pertains to gender identity and expression. While not binding, these Principles have been referred to as guidance by several international and regional organizations, governments<sup>3</sup> and other authorities in the context of human rights treaties' monitoring activities or when developing policies on equality and nondiscrimination.<sup>4</sup> On 10 November 2017 Yogyakarta Principles Plus 10 which were adopted to supplement the original set of 30 principles.
18. We discuss the applicable rights for consideration in the present matter in turn.

### Right to equality and non-discrimination

19. The right to equality and non-discrimination are core principles of human rights, enshrined in a wide range of human rights treaties, including the United Nations Charter and the Universal Declaration of Human Rights. The opening words of the UDHR are unequivocal: *"All human beings are born free and equal in dignity and rights."* Principle 1 of the Yogyakarta Principles states: *"Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights."* Principle 3 of the same principles state that *"Everyone has the right to recognition everywhere as a person before the law."*
20. International human rights law also recognizes that the right to equal protection before the law is a central tenet to the recognition of other rights.<sup>5</sup> Specifically for rights whose realization depends on the identification of an individual, the right to equal protection before the law is therefore intricately connected to the entitlements to the rights to health, education, housing, social security and employment. The right also is important in the individual's protection from torture, arbitrary arrest and detention and ill-treatment. This is because, as the Independent Expert has explained, all situations of deprivation of liberty, proper identification of an individual is the primary guarantee of State accountability.<sup>6</sup> Gender expression should equally be considered as a protected ground, included in open-ended lists of grounds of discrimination in human rights treaties such as Articles 2 and 26 the International Covenant on Civil and Political Rights.
21. United Nations human rights treaty bodies have repeatedly confirmed that the guarantee of equality includes a prohibition on discrimination on the grounds of sexual orientation and gender identity. For example:
  - 21.1. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has

---

<sup>2</sup> Report of the Independent Expert to the United Nations General Assembly on protection against, violence and discrimination based on sexual orientation and gender identity A/73/152, 12 July 2018, para 23.

<sup>3</sup> They have been used by states such as Brazil, Ecuador, Germany, the Netherlands and Uruguay to help guide policy decisions.

<sup>4</sup> The CESCR has referred to the Principles as a source of guidance (General Comment 20, Non-discrimination in ESC Rights, para. 32). For examples of the impact of the Principles and the references made to them by international organizations and governments, see: P.L. Ettlbrick and A. Trabucco Zerán, *The impact of the Yogyakarta Principles on International Human Rights Law Developments*, 2010, [ypinaction.org/files/02/57/Yogyakarta\\_Principles\\_Impact\\_Tracking\\_Report.pdf](http://ypinaction.org/files/02/57/Yogyakarta_Principles_Impact_Tracking_Report.pdf)

<sup>5</sup> A/73/152, para 22

<sup>6</sup> A/73/152, para 24

emphasised that: “Gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.”<sup>7</sup>

21.2. The United Nations Committee on the Elimination of Discrimination against Women has stated: “The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity.”<sup>8</sup>

22. In his biannual reports to the Human Rights Council and UN General Assembly, the UN SOGI Expert has emphasised there is a well-established framework prescribing respect for gender identity in international law and emphasised that United Nations Treaty Bodies have affirmed that gender identity, including gender expression, are prohibited grounds for discrimination.<sup>9</sup> UN SOGI Expert called upon states to among other things, “prevent, investigate and punish...discrimination based on gender identity perpetrated by both State and non-State actors’ and that they ‘eliminate the social stigma associated with gender diversity...’<sup>10</sup>

23. Amnesty International submits that this means that it is unlawful to place additional and/or undue burdens on transgender people who are parents that other transgender persons who are not parents and heteronormative do not have to grapple with.

24. The right to gender recognition of transgender<sup>11</sup> individuals is also derived from a number of fundamental human rights protected in both domestic and international law. This brief however is focused only on the rights to self-determination and privacy.<sup>12</sup>

### Right to self-determination

25. The principle of self-determination is affirmed in Article 10 of the South Korean Constitution which states that: “All citizens shall be assured of human worth and dignity and have the

---

<sup>7</sup> UN CESCR, General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights, 2009, para 32.

<sup>8</sup> UN CEDAW, General Recommendation No. 28: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 2010, para 18.

<sup>9</sup> Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, ‘Protection against violence and discrimination based on sexual orientation and gender identity’ (12 July 2018) UN Doc No. A/73/152, para 17.

<sup>10</sup> A/73/152, para 79(b) and 80.

<sup>11</sup> Amnesty International uses the term transgender to describe individuals whose gender identity and/or gender expression differs from conventional expectations based on the physical sex they were assigned at birth. Commonly, a transgender woman is a person who was assigned ‘male’ at birth but has a female gender identity; a transgender man is a person who was assigned ‘female’ at birth but has a male gender identity. However, not all transgender individuals identify as male or female; transgender is a term that can include members of third genders, as well as individuals who identify as more than one gender or no gender at all. It includes those people who feel they have to - or who prefer or choose to - present themselves in a way that conflicts with the social expectations of the gender role assigned to them at birth, whether they express this difference through language, clothing, accessories, cosmetics or body modification. This definition includes, among many others, transsexual and transgender people, transvestites, cross dressers, no gender, liminal gender, multigender, and genderqueer people, as well as intersex and gender variant people who relate to or identify as any of the above. Due to the diversity of cultural concepts and subcultural self-definitions, and especially due to the lack of another globally valid umbrella term, this definition also includes those who identify with local, indigenous or subculture-specific terms and simultaneously self-identify as trans people or as any of the above. Transgender individuals may or may not choose to undergo some or all possible forms of gender reassignment treatment. This can, but does not necessarily, include surgery and/or hormonal therapy.

<sup>12</sup> See Holning Lau, “Gender Recognition as a Human Right” in Andreas Von Arnould (ed), in *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric*, pp. 193-206.

*right to pursuit of happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals.”* Article 22 of the Universal Declaration of Human Rights (UDHR) also affirms everybody’s right to: *“economic, social and cultural rights indispensable for his dignity and the free development of his personality”*. Additionally, Principle 3 of the Yogyakarta Principles stipulates that self-defined sexual orientation and gender identity of each individual is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. Principle 32 of Yogyakarta Principles +10 explicitly spells out that everyone shall enjoy the right to bodily and mental integrity, autonomy and self-determination regardless of their sexual orientation, gender identity, gender expression or sex characteristics.

26. That the right to identity (including to self-identify) is fundamental to the concept of human dignity, including in the context of families, has also been found by other national regional courts.<sup>13</sup>

### **Right to Privacy**

27. The right to privacy is explicitly protected in Article 17 of the South Korean Constitution: *“The privacy of no citizen shall be infringed”*. It is also enshrined in Article 12 of the UDHR and in Article 17 of the International Covenant on Civil and Political Rights (ICCPR) that states that *“no one shall be subjected to arbitrary or unlawful interference with his privacy [or] family”,* and that *“[everyone] has the right to the protection of the law against such interference”*.

28. Amnesty International therefore submits that these rights cumulatively and individually place an obligation on States to ensure that transgender people can obtain legal recognition of their gender including through issuing all documents with correct gender markers and changing the gender-related information kept in state-run registries without discrimination. The Yogyakarta Principles +10 sets out the obligations relating to the right to legal recognition among other things as follows:

28.1. *“Ensure a quick, transparent, and accessible mechanism that legally recognises and affirms each person’s self-defined gender identity”*.<sup>14</sup>

28.2. They additionally provide those states should: *“Ensure that no eligibility criteria, such as medical or psychological interventions, a psycho-medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third party opinion, shall be a prerequisite to change one’s name, legal sex or gender”*; and:

28.3. *“Ensure that a person’s criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender.”*

### **The rights to marry, to found a family and the right to family life and the Best Interests of the Child**

29. As will be explained below, the rights to marry, to found a family and the right to family life and the best interests of the child are implicated in adjudication this matter. To avoid prolixity, these two rights discussed in detail below.

---

<sup>13</sup> See, for example, the Constitutional Court of South Africa: *National Coalition for Gay and Lesbian Equality v. Minister of Home Affairs* (CCT10/99) (1999), and *Gory v. Kolver NO and Others* (CCT28/06) (2006), see also Concurring opinion of Judge Spano, joined by Judge Bianku in *Taddeucci and McCall v. Italy* (51362/09), ECtHR (2016) para. 4: “In conclusion, the fundamental principle of human dignity, which is one of the cornerstones of Article 8 of the Convention, guarantees to each and every individual the right to found a family with whomever they choose, irrespective of their sexual identity or sexual orientation.”

<sup>14</sup> Principle 31 of Yogyakarta Principles Plus 10, [yogyakartaprinciples.org/principles-en/yp10/](http://yogyakartaprinciples.org/principles-en/yp10/)

### C. SUMMARY AND ANALYSIS OF THE CURRENT REQUIREMENTS FOR LEGAL GENDER RECOGNITION

30. Legal gender recognition in Korea takes place through the Family Court in accordance with “Guidelines for the Handling of Petition for Legal Sex Change Permit of Transgender People.” There is no statutory law governing the process and so in practice judges are given discretion to reference the Guidelines as they determine best fits, but regularly employ them to make important and life-altering decisions about an applicant’s gender.
31. Following the 22 June 2006 full bench ruling on Change of Name and Correction of Family Register (2004Seu42),<sup>15</sup> which first recognized an individual’s change in gender, the Supreme Court adopted the Guidelines on 6 September 2006 under the Family Register which determined which requirements were to be met for an individual to be able to apply for legal gender recognition. In 2011, the Guidelines were amended so that the listed requirements were referred to as “matters for investigation” and in a subsequent amendment made on 21 February 2020 this was changed to “matters for reference”. However, despite these changes in language, the listed requirements continue to determine how decisions are made.<sup>16</sup>
32. To date, the Guidelines have been revised a total of eight times (with substantial changes in 2009, 2011, 2019, 2020). Legal gender recognition was not permitted to transgender people with children of any age until the Guidelines were amended on 5 December 2011. This amendment was done in accordance with a 2 September 2011 Supreme Court full bench decision (2009Seu117) and “whether the applicant has children who are minors” was placed under “matters for investigation.” Another important revision to the Guidelines was made in 2019 when the requirement to submit a parental consent form with one’s application for legal gender recognition was removed.
33. While the Guidelines are not legally binding, in practice they set the standard for which gender is recognized by the courts. In our view the Guidelines apply the following abusive and/or disproportionate requirements for applicants including but not limited to that an applicant at the time of application should not be married, have no minor children, have undergone gender confirmation treatments including genital surgery and be sterile. Furthermore, they promote pathologization of trans identities<sup>17</sup> by requiring a medical diagnosis for all applicants. Listed requirements are:
  - (1) Whether the applicant is 19 years of age or older as a Korean national, is currently married, and whether the applicant has children who are minors.
  - (2) Whether the applicant has suffered from congenital biological gender dysphoria and self-consciousness from the growth period due to sex change and has felt a sense of attribution to the opposite sex.
  - (3) Whether the applicant has undergone psychiatric treatment or hormone therapy for a

---

<sup>15</sup> Supreme Court en banc Order 2004Seu42 Dated June 22, 2006[Change of Name and Correction of Family Register], [library.scourt.go.kr/SCLIB\\_data/decision/3-35%202004Seu42%20Dated%20June%2022.htm](http://library.scourt.go.kr/SCLIB_data/decision/3-35%202004Seu42%20Dated%20June%2022.htm)

<sup>16</sup> Han-Hee Park, ‘Legislative Suggestion for Legal Gender Recognition for Transgender People’ in Human Rights and Justice, June 2021, Vol. 498, pp. 41-60 (in Korean).

<sup>17</sup> Pathologization means to approach gender identity as if it were a disease to be diagnosed and treated. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has said: “Mental health diagnoses have been misused to pathologize identities and other diversities, including tendencies to medicalize human misery. The pathologization of lesbian, gay, bisexual, transgender and intersex persons reduces their identities to diseases, which compounds stigma and discrimination.” Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 28 March 2017, UN Doc. A/HRC/35/21, para 48.

considerable period of time, but the applicant still wishes for surgical treatment, so under the judgement and responsibility of a qualified doctor, the appearance of the body, including external genitals, has changed to opposite sex.

- (4) Whether the applicant has lost reproductive ability as a result of sex change surgery and is unlikely or extremely unlikely to be re-converted to the previous sex in the future.
- (5) Whether the applicant has any special circumstances, such as applying for permission to correct gender for the purpose of using it for a crime or illegal act.

34. Noting “*restrictive requirements for legal recognition of gender reassignment*”, the UN Human Rights Committee, the body monitoring implementation of the ICCPR by the member states, as part of its concerns about discrimination on the grounds of sexual orientation and gender identity called on the Republic of Korea to “*facilitate access to the legal recognition of gender reassignment*” in its 2015 concluding observations.<sup>18</sup> The Human Rights Committee again in its 2019 “List of issues” prior to the next review asked the government to “*indicate the measures taken to: ... Facilitate access to the legal recognition of gender reassignment*”.<sup>19</sup> In its preparatory report for the next review, the government only referred to the judicial abolishment of the requirement of the statement of parental consent.<sup>20</sup>
35. We also pause to take note of some important domestic cases dealing with legal gender recognition in the Republic of Korea:
  - 35.1. In 2013 a full bench decision was made by the Seoul Western District Court (2012Hopa4225) to accept the applications for gender recognition of five transgender men applicants who had not undergone external genital surgery.
  - 35.2. In 2017 the Yeongdong Branch of the Cheongju District Court (2015Hogi302) also recognized the application of a transgender woman who had not undergone external genital surgery.
  - 35.3. Most recently, a transgender man who had not been sterilized was granted gender recognition by the Suwon Family Appellate Court (2020Beu202) on 13 October 2021.
36. We turn now to analyze the existing requirement not to have minor children. We reiterate again that attaching an abusive and disproportionate requirement to legal gender recognition such as not to have minor children is at odds with a number of human rights guaranteed in domestic law as well as international human rights law and standards, including those embodied in treaties which the Republic of Korea has ratified.

#### **a) THE CLAIM OF PROTECTING THE BEST INTEREST OF THE CHILD**

37. Discrimination against transgender individuals based on gender stereotypes, stigma and harmful cultural norms deny their full enjoyment of rights guaranteed under the Constitution and international human rights law. The state has the obligation to identify and remove these harmful social barriers, and not to reinforce or perpetuate them. There is a risk of basing the decision on the unfounded societal norm that parents’ legal change in gender would have a significantly negative effect on the welfare of their children.
38. A determination based on stereotyped assumptions about the parent’s suitability to ensure and promote the child’s well-being and development is not appropriate for the purpose of

---

<sup>18</sup> UN Human Rights Committee, Concluding Observations: Republic of Korea, 23 December 2015, UN Doc. CCPR/C/KOR/CO/4, paras 14-15.

<sup>19</sup> UN Human Rights Committee, List of issues prior to submission of the fifth periodic report of the Republic of Korea, 21 August 2019, UN Doc. CCPR/C/KOR/QPR/5, para. 6(d).

<sup>20</sup> UN Human Rights Committee, Fifth periodic report submitted by the Republic of Korea under article 40 of the Covenant, 24 August 2021, UN Doc. CCPR/C/KOR/5, para. 43.

- guaranteeing the legitimate goal of protecting the child's best interest.<sup>21</sup>
39. It is recognized that the best interests of the child (Article 3(1) of the CRC) is a general principle to support the interpretation and implementation of the CRC<sup>22</sup> and places an obligation on states to observe this principle as a primary consideration in all actions or decisions concerning the child both in the public and private sphere. At the same time, the UN Committee on the Rights of the Child has warned against its abuse by state authorities to justify discriminatory policies.<sup>23</sup> Similarly, the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) requires states to ensure that state policies and practices are not based on, or have the effect of reinforcing, gender stereotypes. This is based on Article 5a of the Convention, which mandates state to take measures to: *“modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”*
40. In the case of *Atala Riffo and Daughter v. Chile*, one issue the Inter-American Court of Human Rights had to consider was whether removal of children from the custody of their lesbian mother would be in the child's best interest. The Inter-American Court of Human Rights stated that, “the child's best interest” being a legitimate goal must not be considered in abstract terms. The court stated that the mere reference to this purpose, without specific proof of the risks or damage to the children concerned as a result of a parent's sexual orientation, could not serve as a suitable measure to restrict a protected right, such as the right to exercise all human rights without discrimination based on the person's sexual orientation. The child's best interest therefore could not be used to justify discrimination against the parents based on their sexual orientation.<sup>24</sup>
41. The Inter-American Court of Human Rights further considers that potential social stigma due to the mother or father's sexual orientation cannot be considered as a valid “harm” for the purposes of determining the child's best interest.<sup>25</sup>
42. The European Court of Human Rights similarly in *Mouta v. Portugal* accepted in principle the protection of the health and rights of the child as a legitimate aim, but unanimously rejected that this could serve to justify differential treatment based on sexual orientation, and even saw a discriminatory intent in that approach.<sup>26</sup>
43. We also note that in 2010, the Committee of Ministers of the Council of Europe issued a recommendation on measures to combat discrimination on grounds of sexual orientation or

---

<sup>21</sup> Inter-American Court of Human Rights, Case of Atala Riffo and Daughters V. Chile, 24 February 2012, [https://corteidh.or.cr/docs/casos/articulos/seriec\\_239\\_ing.pdf](https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf), para. 111.

<sup>22</sup> Committee on the Rights of the Child, *General Guidelines regarding the form and content of initial reports to be submitted by States parties under article 44, paragraph 1 (a), of the Convention*, Adopted by the Committee at its 22nd meeting (first session) on 15 October 1991, CRC/C/5, 30 October 1991; and General Assembly, *Report of the Committee on the Rights of the Child*, Official Records, Forty-seventh Session, Supplement No. 41 (A/47/41).

<sup>23</sup> Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1); CRC/C/GC/14, para. 34; see also General comment 7, Implementing Child Rights in Early Childhood, CRC/C/GC/7/Rev. 1, para. 8.

<sup>24</sup> Inter-American Court of Human Rights, Case of Atala Riffo and Daughters V. Chile, 24 February 2012, [https://corteidh.or.cr/docs/casos/articulos/seriec\\_239\\_ing.pdf](https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf), para. 110.

<sup>25</sup> Inter-American Court of Human Rights, Case of Atala Riffo and Daughters V. Chile, 24 February 2012, [https://corteidh.or.cr/docs/casos/articulos/seriec\\_239\\_ing.pdf](https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf), para. 121.

<sup>26</sup> *Salgueiro da Silva Mouta v. Portugal* (33290/96), ECtHR (1999) paras 34-35. The decision concerned the refusal to award parental responsibility to a father living in a same-sex relationship after divorce from the child's mother; in its decision, the relevant national court had stated, among other things: “[Homosexuality] is an abnormality and children should not grow up in the shadow of abnormal situations” which the Court rejected.

gender identity.<sup>27</sup> Within the context of family law, the Committee of Ministers emphasized that “*the child’s best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child*”. The Minister recommended that Member States must “*ensure that such decisions [on parental responsibility] are taken without discrimination based on...gender identity.*”<sup>28</sup>

## **b) IMPACT ON THE RIGHT TO MARRY, TO FOUND A FAMILY AND THE RIGHT TO FAMILY LIFE**

44. Article 36 of the South Korean Constitution guarantees the right to marriage and family life: “*Marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes, and the State shall do everything in its power to achieve that goal*”. The ICCPR protects right to respect for private and family life (Article 17) and to found a family (Article 23).
45. Principle 3(d) of the Yogyakarta Principles explains that “*No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person’s gender identity*” in explaining the right to equal recognition before the law.
46. In a multi-country review of laws and policies in Asia published in 2017, the Asia Pacific Transgender Network and the United Nations Development Program (UNDP) recommended legal gender recognition based on self-identification and free of requirements that “*discriminate on any grounds including marital or family status, age, or criminal record or that require a mental health diagnosis, medical treatment, or family or community approval*”.<sup>29</sup>
47. It is our submission any requirements that a transgender person must satisfy that limits their ability to fulfil their parental obligations and responsibilities while also access their recognition of gender identity is contrary to the right to found a family and the right to family life. A number of rulings and views have affirmed this position:
  - 47.1. In 2017 the UN Human Rights Committee found in *G. v. Australia* that refusing an application to change the sex marker on a transgender woman’s birth certificate unless she divorced from her spouse constituted a violation of the rights to privacy and family and non-discrimination.<sup>30</sup>
  - 47.2. In South Africa the High Court of Western Cape, had a similar ruling in 2017. In the case of *KOS and Others v Minister of Home Affairs and Others*,<sup>31</sup> the domestic Department of Home Affairs’ actions were declared unlawful and inconsistent with the Constitution of South Africa after it had coerced married couples with one transgender spouse to divorce before amending the trans spouse’s legal gender marker. Before this case, transgender spouses who sought legal gender recognition while married in a civil

---

<sup>27</sup> Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted by the Committee of Ministers on 31 March 2010 at the 1081<sup>st</sup> meeting of the Ministers’ Deputies, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cf40a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a)

<sup>28</sup> Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted by the Committee of Ministers on 31 March 2010 at the 1081<sup>st</sup> meeting of the Ministers’ , [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cf40a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a), para 26.

<sup>29</sup> Asia Pacific Transgender Network and UNDP, 2017, *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*, p. 3.

<sup>30</sup> UN Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2172/2012, 28 June 2017, UN Doc. CCPR/C/119/D/2172/2012.

<sup>31</sup> 2017 (6) SA 588 (WCC) (6 September 2017)

marriage, which is exclusively for opposite sex persons, and applied to change their gender marker were compelled by Department of Home Affairs to divorce.

47.3. In the case of *AM and Others v Russia*, the European Court of Human Rights found that where domestic courts terminated contact between a transgender mother and her children without properly evaluating the potential harm to the children or the scientific basis for supporting termination violated Article 14, read in conjunction with article 8 of the European Convention on Human Rights.

#### **c) IMPACT ON THE RIGHT TO PRIVACY AND RECOGNITION BEFORE THE LAW**

48. Transgender persons like applicant 'X' whose official identification documents do not reflect their gender identity, name or gender expression have to always disclose they are transgender every time they produce these documents for whatever reasons. In Amnesty International's experience and work this is almost a daily occurrence for many countries. We therefore echo the sentiments of the CESCR as highlighted above that in situations where official documents are required to obtain goods or services – for example, in finding employment, enrolling in education, obtaining housing, or claiming welfare benefits – transgender individuals are forced to give up aspects of their right to privacy (in terms of the framework above) in order to access these rights, consequently also undermining their equal recognition before the law.

49. In our view, this framework of international law in this context also means that rights to private life and to recognition before the law are likely to be violated in instances where procedures on legal gender recognition exist but are either overly lengthy and/or contain mandatory criteria to be fulfilled whose practical consequence is the exclusion of some transgender groups like parents in this instance.

#### **d) STATES ARE INCREASINGLY REMOVING DISPROPORTIONATE AND ABUSIVE BARRIERS TO LEGAL GENDER RECOGNITION**

50. Transgender and gender diverse people have lived and participated in societies around the world since before modern legal systems were adopted. However, it was Sweden that first adopted legislation that allowed transgender individuals to legally change their gender marker in 1972, and since then many countries around the world have gone on to introduce legal and administrative procedures to facilitate legal gender recognition.

51. Amnesty International believes that legal gender recognition based on self-determination is most protecting of the human rights of transgender persons, and as such increasingly reflected in international legal standards and practice. Amnesty International further believes that a requirement disallowing legal gender recognition if the applicant has minor children is incompatible with the obligation to respect this self-determination.

52. To further assist Court in its adjudication of this matter we have provided some important developments globally on both legal gender recognition and self-determination model. We believe that such information will be of use to the Court.

#### **(1) LEGAL GENDER RECOGNITION AROUND THE WORLD**

53. A 2020 report on legal gender recognition in the European Union identified that as of summer 2019, 22 EU member states and the UK had set out procedures based in legislation

to facilitate legal gender recognition.<sup>32</sup> The report groups EU member states in five clusters based on accessibility with countries in the bottom tier Cluster 1, lacking clear procedures based on legislation in which decisions are made by judges through the courts, and top tier Cluster 5, operating a system of self-determination without abusive requirements that is largely in line with the Yogyakarta Principles: **Belgium, Denmark, Ireland, Luxembourg, Malta and Portugal**. A 2021 survey by TGEU identified that of 54 countries they reviewed in the wider region of Europe and Central Asia, 39 had legal or administrative measures that provided transgender people varying degrees of access to legal gender recognition.<sup>33</sup>

54. The most comprehensive global study available is the International Lesbian, Gay, Bisexual, Trans and Intersex Association's (ILGA) 2019 Trans Mapping Report which includes information for 143 UN member states and 19 other jurisdictions about gender recognition procedures. It found that at least 96 UN member states provide legal gender recognition, with at least 25 of these states doing so without attaching prohibitive requirements.<sup>34</sup> The same report found that 9 UN member states or jurisdictions had introduced gender recognition processes that did not involve abusive requirements since 2018.<sup>35</sup>
55. Out of the 32 countries surveyed in Asia, legal or administrative procedures are available in at least 20 countries with varying requirements. Three Asian countries also have laws specific to transgender people which govern the process of gender recognition: **India, Japan and Pakistan**.
56. In 2015 the **Maltese** Parliament adopted the Gender Identity, Gender Expression and Sex Characteristics Act. Section 3 of the Act states provides that when seeking for recognition of their gender identity, "shall not be required to provide proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment to make use of the right to gender identity." Section 4 also stipulates that a person shall be able to also apply for change in name to reflect the person's self-determined gender identity.<sup>36</sup>
57. In 2016, the **Norwegian** Parliament adopted the Gender Recognition Act, approved the right of self-determination in Norway and eliminated the requirements of medical intervention. The change is reflected on official documents, and no medical requirements nor psychiatric diagnoses are required. Previously, legal gender recognition was not possible without a medical diagnosis and sterilization.<sup>37</sup>

---

<sup>32</sup> European Commission, Directorate-General for Justice and Consumers, *Legal gender recognition in the EU: the journeys of trans people towards full equality*, Publications Office, 2020, <https://data.europa.eu/doi/10.2838/50202>, p. 7.

<sup>33</sup> The study also found that of these 39 countries 28 required a mental health diagnosis, 10 sterilization, 19 divorce, 15 have LGR procedures for minors (9 without any age limit and 6 require a minimum age) and 8 based on individual self-determination and 2 countries provide full and 1 partial legal recognition to non-binary people. TGEU, *Trans Rights Europe & Central Asia Index 2021*, 2021, [tgeu.org/wp-content/uploads/2021/05/tgeu-trans-rights-map-2021-index-en.png](https://tgeu.org/wp-content/uploads/2021/05/tgeu-trans-rights-map-2021-index-en.png)

A more recent 2022 report from the same organization found that the number of countries in the region with self-determination laws had increased to from 8 to 9 and the number of countries in the region requiring sterilization had decreased from 10 to 9. TGEU, 'Trans Rights Map 2022 reveals slow comeback of progress on trans rights' 12 May 2022, <https://tgeu.org/trans-rights-map-2022/>

<sup>34</sup> ILGA World, *Trans Legal Mapping Report 2019: Recognition before the law*, 2020, [ilga.org/ilga-world-releases-trans-legal-mapping-report-3rd-edition](https://ilga.org/ilga-world-releases-trans-legal-mapping-report-3rd-edition)

<sup>35</sup> Australia (some States), Belgium, Brazil, Chile, Costa Rica, France, Greece, Luxembourg, and Portugal. Daniele Paletta, 'Trans Human Rights: ILGA World Releases Global Research into Legal Gender Recognition and Criminalization', 30 September 2020, <https://ilga.org/ilga-world-releases-trans-legal-mapping-report-3rd-edition>

<sup>36</sup> Gender Identity, Gender Expression and Sex Characteristics Act, 14 April 2015, <https://legislation.mt/eli/cap/540/eng/pdf>

<sup>37</sup> ILGA World, *Trans Legal Mapping Report 2019: Recognition before the law*, 2020, [ilga.org/ilga-world-releases-trans-legal-mapping-report-3rd-edition](https://ilga.org/ilga-world-releases-trans-legal-mapping-report-3rd-edition), p. 152. See also: Amnesty International, 'Norway: Historic breakthrough

58. **Pakistani** lawmakers adopted The Transgender Persons (Protection of Rights) Act in May of 2018 making the first country in Asia to introduce legal gender recognition based on self-determination. While there are aspects of the law which certainly need to be improved such as abusive and disproportionate citizenship and age requirements, it has no abusive medical or diagnostic requirements and states that “a transgender person shall have a right to be recognized as per his or her self-perceived gender identity”.<sup>38</sup>
59. In 2019 **Iceland** the Gender Autonomy Act No 80/2019 which has been amended by Act 159/2019, NO 152/2020 and No. 154/2020. The Act, which adopts a self-determination model, allows the state to amend a person’s gender in the Official Registry in accordance with their own experience and without having to meet conditions for diagnosis or medical treatment. Specially Article 4 of the Gender Autonomy Act prohibits the requirements of surgical operation, medication, hormonal treatment and/or other medical treatment, such as psychiatric or psychological therapy, as conditions for changing the registration of gender.
60. In December of 2020, **Switzerland** adopted legislation to introduce a simple legal gender recognition process based on self-identification which went into effect on 1 January 2022.
61. In September of 2021, a **Taiwanese** court ruled that a government requirement obliging transgender people to provide proof of reproductive organ removal surgery in order to affirm their legal gender was unconstitutional.<sup>39</sup>
62. In December of 2021, **New Zealand** adopted legislation that will introduce a legal gender recognition based on self-identification in 2023.<sup>40</sup>
63. In 2022 **Andorra** became the most recent country to ground legal gender recognition in law for adults, emancipated minors, and children with consent of their legal guardians through a court procedure.<sup>41</sup>
64. Notably, only two countries in the world are known to still include the abusive and disproportionate requirement that applicants must not have dependent children: South Korea and **Japan**. Japan’s Supreme Court upheld the constitutionality of this requirement in the country’s Act on Special Cases in Handling Gender for People with Gender Identity Disorder in a November 2021 majority ruling. **Ukraine** had previously denied legal gender recognition to transgender individuals with minor children under its Order No. 60 until this order was cancelled in December of 2016.<sup>42</sup>

## (2) SELF-DETERMINATION MODEL<sup>43</sup>

65. In 2016 the UN Office of the High Commissioner for Human Rights similarly called for legal

---

for transgender rights’, 18 March 2016, <https://www.amnesty.org/en/latest/news/2016/03/norway-historic-breakthrough-for-transgender-rights-2/>

<sup>38</sup> Pakistan, Transgender Persons (Protection of Rights) Act, 2018, [https://na.gov.pk/uploads/documents/1526547582\\_234.pdf](https://na.gov.pk/uploads/documents/1526547582_234.pdf), section 3.

<sup>39</sup> Amnesty International, ‘Taiwan: Landmark moment for transgender rights as court rules against surgery requirement’, 25 September 2021, [amnesty.org.uk/press-releases/taiwan-landmark-moment-transgender-rights-court-rules-against-surgery-requirement](https://www.amnesty.org.uk/press-releases/taiwan-landmark-moment-transgender-rights-court-rules-against-surgery-requirement)

<sup>40</sup> Beehive, ‘Self-identification a new milestone in New Zealand’s history’, 9 December 2021: <https://www.beehive.govt.nz/release/self-identification-new-milestone-new-zealand%E2%80%99s-history>;

<sup>41</sup> TGEU, ‘Andorra adopts first gender recognition law’, 25 July 2022, TGEU, <https://tgeu.org/andorra-adopts-first-gender-recognition-law/>

<sup>42</sup> TGEU, ‘Ukraine abolishes arbitrary and cruel trans health protocol’, TGEU, 25. January 2017, [tgeu.org/ukraine-abolishes-arbitrary-and-cruel-trans-health-protocol/](https://tgeu.org/ukraine-abolishes-arbitrary-and-cruel-trans-health-protocol/)

<sup>43</sup> See the definition provided by the European Commission in its 2020 report: “Self-determination: Self-determination is a method to access legal gender recognition based on a statutory or notary statement by the trans person, with no additional requirements.” European Commission, Directorate-General for Justice and Consumers, *Legal gender recognition in the EU: the journeys of trans people towards full equality*, Publications Office, 2020, <https://data.europa.eu/doi/10.2838/50202>, p. viii.

gender recognition free of abusive requirements but based on self-determination. In particular, it called for such procedures to be:

- 65.1. Be based on self-identification
- 65.2. Allow for recognition of non-binary identities
- 65.3. Be a simple administrative process
- 65.4. Give minors access to recognition of their gender identity
- 65.5. Not require applicants to present medical certification, undergo surgery, sterilization or divorce.<sup>44</sup>

66. The UN Human Rights Committee has called for *“a quick, transparent and accessible gender recognition procedure on the basis of self-identification by the applicant”*<sup>45</sup> on at least two occasions. This is a position also consistently held by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.<sup>46</sup>
67. Principle 31 of the Yogyakarta Principles Plus 10 makes it clear that the right to legal recognition includes the obligation of the state to *“Ensure access to a quick, transparent and accessible mechanism to change names, including to gender-neutral names, based on the self-determination of the person.”* Further, Principle 32 mandates states to *“guarantee and protect the rights of everyone, including all children, to bodily and mental integrity, autonomy and **self-determination**.”* (own emphasis)
68. The Inter-American Court of Human Rights in and Advisory Opinion focused on Gender identity, and equality and non-discrimination of same-sex couples explained that the American Convention protects the *“right of each person to define his or her sexual and gender identity autonomously and that the personal information in records and on identity documents should correspond to and coincide with their self-defined identity.”*<sup>47</sup> The opinion affirms that *“States must respect and ensure to everyone the possibility of registering and/or changing, rectifying or amending their name and the other essential components of their identity such as the image, or the reference to sex or gender, without interference by the public authorities or by third parties. This necessarily means that those who identify themselves with diverse gender identities must be recognized as such. Moreover, the State must ensure that they can exercise their rights and contract obligations based on that same identity, without being obliged to purport another identity that does not represent their individuality, especially so 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.”*
69. The European Commission published a report in 2020 which called for EU Member States to *“Ensure access to clear, transparent, swift and respectful legal gender recognition (LGR) procedures”* in law and practice, based on self-determination.<sup>48</sup>

---

<sup>44</sup> Office of the United Nations High Commissioner for Human Rights, 2016, Living Free and Equal, pp. 94-96. See also Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Protection against violence and discrimination based on sexual orientation and gender identity, 12 July 2018, UN Doc. A/73/152.

<sup>45</sup> UN Human Rights Committee, Concluding Observations: Czechia, 6 December 2019, UN Doc. CCPR/C/CZE/CO/4, para. 13; UN Human Rights Committee, Concluding Observations: Uzbekistan, 1 May 2020, UN Doc. CCPR/C/UZB/CO/5, para. 11(d).

<sup>46</sup> Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Visit to Ukraine, 27 April 2020, A/HRC/44/53/Add.1, para. 93.

<sup>47</sup> Inter-American Court of Human Rights, Gender identity, and equality and non-discrimination of same-sex couples, Advisory Opinion OC-24/17, Series A No. 24 (24 November 2017), para 115, [https://www.corteidh.or.cr/docs/opiniones/seriea\\_24\\_eng.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf)

<sup>48</sup> European Commission, Directorate-General for Justice and Consumers, *Legal gender recognition in the EU: the*

70. The African Commission, Inter-American Commission on Human Rights, and the UN human rights mechanism adopted a report, titled Ending violence and other human rights violations based on sexual orientation and gender identity, in November 2015.<sup>49</sup> In discussing the obligations of legal gender recognition, the report notes that *“Each person’s self-defined gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.”*<sup>50</sup>

### (3) REGIONAL JURISDICTIONS

#### Council of Europe

71. In 2015 the Council of Europe adopted Parliamentary Assembly Resolution 2048, Discrimination against transgender people in Europe, in which it called on its member states to *“develop quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people on birth certificates, identity cards, passports, educational certificates and other similar documents”*.<sup>51</sup>

#### Organization of American States

72. In 2012 the Inter-American Court of Human Rights affirmed that gender identity was included as a category afforded protected from discrimination under Article 1(1) of the American Convention on Human Rights.<sup>52</sup> The Inter-American Commission on Human Rights (IACHR) has affirmed that it *“embraces each person’s self-identification as a guiding principle”*<sup>53</sup> and stated that:

*“...in relation to the obligation of States to adopt laws that recognize the right to identity of trans persons - called gender identity laws - the IACHR reiterates that such laws must allow, among other things, that trans persons have access to identity documents according to the gender with which they identify, which should include not only the change of name but also the sex component and must not have a pathologizing component. The Commission also considers that these procedures should be easily accessible - ideally administrative procedures – and must be based on the free and informed consent of the person concerned, in order to ensure the greatest protection for trans people. Finally, the IACHR considers that the recognition of gender identity should*

---

*journeys of trans people towards full equality*, Publications Office, 2020, <https://data.europa.eu/doi/10.2838/50202>, paras 10.3.2-10.3.3.

<sup>49</sup> African Commission on Human and Peoples’ Rights, Inter-American Commission on Human Rights, United Nations & University of Pretoria (eds) *Ending Violence and Other Human Rights Violations Based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and Peoples’ Rights, Inter-American Commission on Human Rights and United Nations’* (2016), <https://www.pulp.up.ac.za/component/edocman/ending-violence-and-other-human-rights-violations-based-on-sexual-orientation-and-gender-identity-a-joint-dialogue-of-the-african-commission-on-human-and-peoples-rights-inter-american-commission-on-human-rights-and-united-nations>

<sup>50</sup> Annex 6: Norms, case law and practices relevant to sexual orientation, gender identity and intersex status in the United Nations system, page 70, as cited in the report.

<sup>51</sup> Council of Europe, Parliamentary Assembly Resolution 2048 on Discrimination against transgender people in Europe, 22 April 2015, [pace.coe.int/en/files/21736](https://www.coe.int/en/files/21736), para. 6.2.1.

<sup>52</sup> Inter-American Court of Human Rights, Case of Atala Riffo and Daughters V. Chile, 24 February 2012, [https://corteidh.or.cr/docs/casos/articulos/seriec\\_239\\_ing.pdf](https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf), para. 91.

<sup>53</sup> Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, 12 November 2015, <http://www.oas.org/en/iachr/reports/pdfs/violenceigbtipersons.pdf>, para 11.

*not be subordinated to the performance of gender identity reaffirmation procedures such as reaffirmation surgeries and/or hormonal treatments.*<sup>54</sup>

#### (4) GOOD PRACTICE: ARGENTINA

73. Argentina's 2012 Gender Identity Law is considered a good practice example of a gender recognition process based on self-determination that is grounded in law.<sup>55</sup>
74. The legislation explicitly recognizes an individual's "*free development of their person according to their gender*" and states that no medical or psychological treatments are required, and that the procedure is free and does not require the intervention of a third agent or a legal representative.
75. While the law applies to those 18 and older, a provision allows for those under the age of 18 to apply with the consent of their legal representative and, when this consent is not able to be gained, for competent judicial authorities to decide "*taking into account the evolving capacities and best interests of the child as expressed in the Convention on the Right of the Child*". Birth certificates are amended, and a national identity registration is issued with a legal change of gender.<sup>56</sup>

#### IV. CONCLUSION

76. International law and standards recognize legal gender recognition as a human right and recent developments have pointed to movement towards gender recognition procedures free of abusive and disproportionate requirements and based on self-determination as a way to promote and recognize these rights and accompanying obligations.
77. Accordingly, the Republic of Korea has an obligation to ensure that all people including transgender people have the right to legal gender recognition, as grounded in international human rights standards and the Constitution. Amnesty International has called on the South Korean authorities to ensure legal gender recognition is not contingent on psychiatric diagnosis, medical treatments such as forced sterilization and genital reconstruction surgery or other abusive or discriminatory requirements such as marital status or not having children and is a quick, accessible and transparent administrative process based on individual self-declaration. We repeat this call with this submission.
78. In light of the concerns highlighted in this briefing, Amnesty International respectfully submits to the Supreme Court of Korea that recognition of the legal gender of the applicant should not depend on abusive and discriminatory requirements, including that not to have minor children, in order to ensure the human rights of the applicant guaranteed under Articles 11(1), 17 and 36(1)) of the Constitution and international human rights law are respected, protected and fulfilled.

---

<sup>54</sup> Inter-American Commission on Human Rights, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, 7 December 2018, [oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf](https://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf), para. 95.

<sup>55</sup> *Identidad de Género, Ley 26.743, Establécese el derecho a la identidad de género de las personas, Sancionada: Mayo 9 de 2012, Promulgada: Mayo 23 de 2012, servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm*  
An English translation of the law is available at: Alejandra Sardá-Chandiramani and Radhika Chandiramani, 'English Translation of Argentina's Gender Identity Law as approved by the Senate of Argentina on May 8, 2012' 12 September 2013, TGEU, <https://tgeu.org/argentina-gender-identity-law/>

<sup>56</sup> ILGA World, *Trans Legal Mapping Report 2019* (previously cited), pp. 180-182.