

LICENSE TO BE YOURSELF:  
**RESPONDING TO  
NATIONAL SECURITY  
AND IDENTITY FRAUD  
ARGUMENTS**



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# INTRODUCTION

In 2014, the Open Society Foundations produced *License to Be Yourself*, a report on progressive gender recognition laws and policies for trans people, and the activist strategies behind them.<sup>1</sup>

This is one of four complementary briefs for activists, to be used to strengthen advocacy for the progressive laws outlined in *License to Be Yourself*. Each brief summarizes key arguments made by those opposing access to legal gender recognition. This brief counters concerns that progressive gender recognition laws and policies will undermine national security and increase the risk of identity fraud. It also introduces related issues that are particularly relevant to people with intersex variations.<sup>2</sup>

The other three briefs focus on explicit exclusion of trans (and, in some cases, intersex) people from legal gender recognition—due to their age or marital status or because they have not undergone medical procedures that result in sterilization.

## OVERVIEW

In many regions across the globe, trans people cannot obtain official documents that acknowledge their appropriate name and sex or gender marker. Trans people risk discrimination when they use a document that does not match their gender identity. In addition, they may be suspected of identity fraud and trigger security alerts because of this discrepancy. This is particularly dangerous in situations where a trans person is crossing a border and being unable to prove one's identity can result in being detained.

Trans, intersex, and human rights organizations have documented multiple cases of human rights violations by airport security and border control agencies when checking identity documents or undertaking searches, including strip-searches.<sup>3</sup> Airport screening provisions may explicitly exclude people who have not been able to obtain an identification document that matches their gender identity or expression.

Trans people are particularly vulnerable to charges of fraud and deception. Their existence defies widely held beliefs that a person's assigned sex and gender identity always match, and that both are permanently fixed as either male or female. As a result, discrepancies between sex and gender identity, or change in either over time, often arouse suspicion. Laws prohibiting "cross-dressing" typically use the term "female impersonation," insinuating that a "cross-dressing" trans woman can never be a "real" woman.

Trans and intersex people have been denied protection from discrimination, been subjected to sexual assault, or had their marriages annulled because courts decided they were being deceitful and merely "pretending" to be female or male.<sup>4</sup> In some jurisdictions, antidiscrimination provisions place an additional burden on trans and intersex people to prove that they are not deceiving others when identifying as a particular gender identity or sex.<sup>5</sup>

## TERMINOLOGY AND SCOPE

This brief uses the umbrella term **trans** to describe people whose gender identity differs from their sex assigned at birth. It includes, for example, gender variant, gender nonconforming, nonbinary and genderqueer people, as well as those who identify as transgender or transsexual, or who use culturally specific terms. These include *fa'afafine* / *fa'atama* (Samoa), *travesti* (Central and South America), *meme* (Namibia), *hijra* (India), *meti* (Nepal), *kathoey* (Thailand), and *transpinay* / *transpinoy* / (Philippines).

**Gender identity** refers to the way an individual perceives their own gender. This is an individual's deeply felt identification as male, female or some other gender. This may or may not correspond to the sex they were assigned at birth.

**Gender expression** refers to how a person manifests or displays their gender identity and/or how this is perceived by others. For example, this may be seen in choices that a person makes about their clothes, voice, hairstyle, facial hair, use of makeup, or mannerisms.

**Sex characteristics** refer to a range of biological features including chromosomes, hormones, reproductive capacity, and external genitalia. The vast majority of people are assigned or designated a sex at birth based on external sex characteristics.

Trans people are particularly vulnerable to charges of fraud and deception. Their existence defies widely held beliefs that a person's assigned sex and gender identity always match, and that both are permanently fixed as either male or female.

However, not everyone is born with sex characteristics that fit neatly into just two binary categories, either totally “male” or totally “female.”

The term **intersex** refers to people born with variations in physical sex characteristics (such as chromosomes, gonads or genitals) that are considered to be either male or female at the same time, only partially male or partially female, or neither male nor female. Intersex bodies do not fit typical definitions of male or female. There are no firm population figures for people with intersex variations, however, one frequently cited estimate is that these occur in around 1.7 percent of all live births.<sup>7</sup> There is a diversity of intersex bodies, identities, and experiences. Some people with intersex variations may describe their sex or gender identity in nonbinary terms, but most are male or female.

The terms **sex** and **gender** are used inconsistently both within and between countries. In some languages, there is no distinction between the two words. In others, even if the terms have quite distinct meanings, they are frequently used interchangeably. In this document, the distinction being made is between someone’s assigned sex at birth and their affirmed or preferred gender.

The term **legal gender recognition** describes how countries recognize a person’s gender identity. The focus of these Open Society briefs is on how countries’ laws and policies enable an individual’s legal sex classification (or gender marker) to be amended to match their gender identity. Typically, this involves changing a range of identification documents, administered by many agencies, often with different criteria for changing their records.

This resource aims to support people advocating for progressive gender recognition laws and policies. It unpacks and addresses some of the stereotypes and misinformation behind concerns that such proposals pose national security and identity fraud risks.

## **NATIONAL SECURITY AND IDENTITY FRAUD ISSUES FOR INTERSEX PEOPLE**

Although this brief is written from a trans perspective, many of the issues it describes are also relevant to people with intersex variations. These include the extra scrutiny given to people when crossing borders if there is some discrepancy between their identification documents and their gender expression. In addition, many intersex and trans people share concerns about what information regarding their body diversity could be revealed through scanners or personal searches, and whether their right to dignity and privacy will be respected.

Concerns about identity fraud and national security are frequently used to justify restricting the ability of people to change their sex classification or gender marker. An underlying argument is that maintaining continuity of identity, or a transparent way for the state to track any allowed changes, is an important deterrent against fraud.

In contrast, the process of assigning a sex to an intersex infant or child is often shrouded in secrecy and shame, with very little transparency. Children with intersex variations typically face a complex series of interactions with the medical system that are intertwined with obtaining an initial sex classification. When those medical interventions result in irreversible changes to a child’s body, they erase information

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about that person's intersex variation. This loss of information is compounded if medical records are destroyed or withheld. One of the demands of the Third International Intersex Forum was the need "to ensure that intersex people have the right to full information and access to their own medical records and history."<sup>8</sup>

Athletes with intersex variations also face scrutiny if their physical characteristics are perceived to vary from sex norms. For example, a female athlete with an intersex variation may find that her identity as a woman is questioned even though she was assigned female at birth, raised as a girl and is legally recognized as female. Such scrutiny demonstrates a failure to respect intersex athletes' identities. Sporting policies often require medical verification before women athletes with intersex variations can compete as women. This contributes to a culture of bullying and humiliation based on perceived physical characteristics. Such policies have also resulted in unnecessary sterilization and other surgical interventions, public humiliation, and exclusion.<sup>9</sup> Yet there is no evidence in medal tables to show that women with intersex variations compete unfairly and no scientific basis for their exclusion from competitive sport.<sup>10</sup> In 2015, the Court of Arbitration for Sport found that the way the International Association of Athletics Federations (IAAF) regulated intersex athletes (through testosterone levels) was scientifically unsound. The court placed a two-year moratorium on the IAAF's current policies and required the federations to undertake further studies.<sup>11</sup> Some athletes with intersex variations may have a natural physical advantage, as do many other elite athletes. Therefore, an intersex variation cannot reasonably be compared to instances of doping, cheating, or identity fraud.

Athletes with intersex variations also face scrutiny if their physical characteristics are perceived to vary from sex norms.

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# THE CURRENT SITUATION

“Everyone has the right to life, liberty and security.”

—UNIVERSAL DECLARATION OF HUMAN RIGHTS, ARTICLE 3

—INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR), ARTICLES 6 AND 9

## INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The right to security is one of three distinct but strongly interconnected elements of the International Covenant on Civil and Political Rights, including the rights to life and liberty. It requires the state to protect the physical integrity of its citizens, through both national security and individual security.

National security focuses on protecting citizens from external threats, including invasion, terrorism, and biosecurity risks to human health. Within its borders, a country protects people from abuse by other citizens or by official authorities. This individual or personal security encompasses “freedom from injury to the body and the mind, or bodily and mental integrity.” A 2014 General Comment from the Human Rights Committee explicitly mentions that Article 9 guarantees these rights to everyone, including “transgender persons” and countries “must respond appropriately to patterns of violence [...] against persons on the basis of their sexual orientation or gender identity [...]”<sup>12</sup>

International human rights standards do not allow concerns about national security or fraud to override trans people’s rights to security, privacy, recognition before the law, freedom of movement, and freedom of expression. The ICCPR enables some, but not all, civil and political rights to be restricted where necessary to protect national security. However, such restrictions must be lawful and consistent with other rights in the covenant. Even in situations that are deemed to be states of emergency, there are tight restrictions on measures that undermine these rights.<sup>13</sup>

The disproportionate impact of counter-terrorism measures on trans people has been documented by Martin Scheinin, the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism. In 2009, he specifically mentioned two threats to trans people’s right to recognition before the law:

- Greater suspicion and harassment of trans people can occur when immigration controls focus on detecting male bombers who may be dressed as females.
- [S]tricter procedures for issuing, changing and verifying identity documents risk unduly penalizing transgender persons whose personal appearance and data are subject to change.<sup>14</sup>

The Special Rapporteur recommended repealing “restrictive immigration controls and asylum procedures that violate the human rights, including the right to freedom of movement, of transgendered persons [...]”<sup>15</sup>

In June 2014, the UN General Assembly adopted a resolution reaffirming and updating the UN’s 2006 global counter-terrorism strategy, to ensure that measures taken to counter terrorism comply with international human rights, refugee, and humanitarian law. A number of points in the resolution are particularly relevant to trans people. Specifically, it emphasizes that:

- Any measures taken to counter terrorism should not be based on profiling or resort to stereotypes.
- The right to privacy set out in the Universal Declaration of Human Rights and Art.17 of the ICCPR includes the right to be secure from unreasonable search and seizure.<sup>17</sup>

National security focuses on protecting citizens from external threats, including invasion, terrorism, and biosecurity risks to human health.



## PROGRESSIVE LAWS, POLICIES, AND PRACTICES

For the purpose of this brief, progressive laws and policies are considered those that recognize and address the particular vulnerability of trans or intersex people to surveillance when their sex or gender marker on official documents:

- Does not match their gender expression / presentation
- Identifies them as other than male or female
- Does not match their physical body (as detected through body scanning technology, or a pat-down or other forms of searches) or discloses that their body varies from male or female norms
- Varies between documents or has been changed more than once from their sex assigned at birth
- Cannot be verified

Each of these issues is addressed in turn below, and progressive policies or legislation are identified wherever possible. In addition, racial profiling by police, border control agencies, and other law enforcement officers places some trans and intersex people at greater risk of scrutiny than others.<sup>18</sup>

### SELF-DETERMINATION

When people are able to update official documents based solely on their self-defined gender identity, they have the choice of selecting the option that most closely matches their gender expression. **Argentina, Denmark, Ireland, and Malta** enable such a process for amending birth certificates based on self-determination.<sup>19</sup> Similar provisions have recently been proposed in **Norway, Sweden, and the United Kingdom**.<sup>20, 21</sup> **New Zealand** has such flexibility for amending passports,<sup>22</sup> and **Colombia** allows for changes to the sex designation on identification cards with no psychiatric or physical evaluations.<sup>23</sup>

### THIRD GENDER OPTIONS

A small but growing number of countries allow a third gender marker to be used on passports or other identification documents, particularly in **South Asia (Bangladesh, India, Nepal, and Pakistan)**<sup>24</sup> and in **Australia and New Zealand**.<sup>25</sup> In Europe, **Malta** has recently followed Denmark's example in having a third X option on passports.<sup>26</sup> Where such categories exist, it is important that trans and intersex people retain the right to identify as female or male and are not forced into a third category. For example, the April 2014 decision from the Indian Supreme Court, *National Legal Services Authority v. Union of India*, recognizes that all trans people have the "right to decide their self-identified gender [...] such as male, female or a third gender." However, concerns have already been raised about how this decision is being implemented in practice.<sup>27</sup>

While the guidelines of the International Civil Aviation Organization (ICAO) recognize a third sex option on passports (marked with an "X"),<sup>28</sup> not all countries are ICAO members. Even within those countries bound by the ICAO guidelines, travellers with an X on their passport may be exposed to discrimination or higher levels of surveillance. There is a fear that, even in countries that allow third gender passports, the right of individuals to travel to other countries, such as the **United States**, may be severely restricted because customs and immigration officials may not process those who do not

A small but growing number of countries allow a third gender marker to be used on passports or other identification documents.

have binary gender documents. Even in countries where a third gender option exists, other border control agencies may only give people the option of identifying as male or female. For example, in many countries it is standard practice that there are only male and female queues for pat-down searches at airports.

Conversely, for some travellers with a nonbinary gender expression, an X passport might provide the explanation needed to allay any concerns from border control agencies. There is a need for greater levels of training amongst airport security, border control, and airline staff about the validity of passports and other identity documents marked with an X. This requires ensuring data systems, including airline booking systems and electronic passport scanners, recognize such an option.

Others have argued for sex classifications or gender markers to be removed from passports and other identification documents:

*Sex-classification policies are unjust because they prompt and authorize administrative agents to use their own subjective gender judgments to target, inspect, and exclude transgender-appearing people from the public accommodations under their watch. The vast majority of sex-classification policies are not rationally related to legitimate policy goals because there is no objective, socially agreed upon test for determining who is male and who is female, and legitimate policy goals such as fraud prevention, safety, security, and privacy can almost always be met more effectively by alternative means that do not subject people to gender inspection.<sup>29</sup>*

Some countries have considered removing gender markers from passports, though this would require a change to current ICAO requirements.<sup>30</sup> Other border control agencies, such as customs, do not always require these details.<sup>31</sup>

A different approach was taken by **Germany** when it introduced a third blank category on birth certificates in November 2013. Since then, if a child's gender classification cannot be medically assigned as male or female, it must be left blank. This change has been criticized for exposing infants' intersex status and unnecessarily invading their privacy. There are related concerns that such birth certificates could result in increased discrimination and stigma, and potentially exclude the holder from rights given to people who have either male or female on their identification documents.<sup>32</sup> The 2013 law did not specifically outlaw the imposition of surgeries on intersex children, despite the fact that this was recommended by the UN Committee against Torture in 2011. As a result, there is also a fear that parents may seek surgeries for intersex children in order to avoid the perceived stigma of the third label. In contrast, **Malta** has addressed these concerns by outlawing such surgeries altogether. The law does not require a third gender marker but simply provides that a definitive gender need not be assigned before the age of 18.

## BODY DIVERSITY

Body scanning and pat-down searches are often very stressful situations for trans and intersex people. This can be due to concerns about how their body diversity will be perceived by others, and whether prosthetics (to create the shape of breasts or a penis, for example) will be identified as anomalies by a scanning device. Such stress can be interpreted as suspicious by airport security and border control agencies. Therefore, it is important that officials are trained on how to treat people with dignity, care, and respect when doing a body-scan or pat-down of a trans or intersex person.

Body scanning and pat-down searches are often very stressful situations for trans and intersex people.

People who are traveling should also be aware of their rights to privacy, freedom of expression, and liberty of movement.<sup>33</sup>

Specifically, body scanning technology has been criticized for prompting additional screening if a person's gender expression does not match their gender marker or their body is perceived to be outside supposed norms. Trans people and others requesting privacy should have the option of passing through a metal detector rather than a body scanner.<sup>34</sup>

International human rights standards require personal and body searches to be "carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to a body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the 'same sex.'"<sup>35</sup> This guidance from the United Nations Human Rights Committee does not clarify what "the same sex" means when applied to trans people or people with intersex variations.

Some national policies clarify that trans and intersex people, irrespective of the gender marker on their official documents, are able to choose whether they are searched by a male or a female. For example, this is the case in both **New Zealand** and in **Berlin, Germany**.<sup>36</sup> In the **United Kingdom**, there is a similar police policy that can only be overridden if there is evidence that a person's stated gender identity does not accurately reflect their "predominant lifestyle."<sup>37</sup> In the **United States**, the Transportation Security Administration's guidance clarifies that decisions about who does a pat-down search of a trans person are based on the trans person's gender presentation.<sup>38</sup>

#### DISCREPANCIES BETWEEN DOCUMENTS OR MULTIPLE CHANGES OVER TIME

When a person has documents with different gender markers or has changed these details more than once, this may raise alerts about possible identity fraud. Yet these discrepancies are frequently caused by a country's laws and policies that set different criteria for changing one's gender marker on various official documents.

Given the importance of identification documents for daily life, people are likely to change their gender marker wherever this is possible, even if this means their various forms of identification no longer match. For example, a trans person may be able to put the appropriate gender marker on their passport but not meet the legal requirements to update their birth certificate.

Progressive gender recognition laws or policies would enable an amendment to one official document to then be used to update other official documents.<sup>39</sup> As a minimum, people should be able to use an amended document to verify their identity for other purposes.<sup>40</sup> Simplifying gender recognition laws, so that people are able to have documents that match their gender identity and expression, will reduce the number of "false alarms" that need to be managed.

Similarly, there is a range of valid reasons why trans people may have changed their gender marker more than once. In some countries, a third "indeterminate" gender marker has been available for those who have started to transition but do not meet the legal threshold to change from one binary sex classification to another. In these situations, many trans people initially select this third gender option and then change it once they are eligible to be recognized as male or as female. Conversely, as more countries introduce a third gender category, this could be the preferred option for some trans people who have previously only had the option of changing their gender marker from male to female or vice versa. There are also instances where decisions

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legal guardians have made for an intersex, trans, or gender-diverse child may be changed when the young person is able to independently choose their gender marker. In addition, a very small proportion of trans adults transition and later choose to change their gender marker back to match their sex assigned at birth.

Identity documents are, by their very nature, intended to accurately reflect a person's identity. In addition, information and privacy standards frequently include the requirement to update information so that it remains accurate. It is routinely acknowledged that people's names may change, sometimes multiple times over the course of their lives. Security and fraud management systems recognize that it is appropriate for identity documentation to be updated to reflect these changes. Allowing people to change their gender marker more easily does not create any new risks. If a person's gender identity does evolve over time, it is better to track that evolution than to leave the individual with documents that do not reflect their current presentation and self-identification. As long as gender markers are included in identity documents, these details also need to be easily changeable to accurately reflect a person's current identity.

Progressive gender recognition laws or policies that protect the privacy of previous records can reduce the likelihood of subsequent changes alerting security concerns. Border control agencies should also be aware that these are valid reasons why people may not have the same gender marker on all their documents or may have changed these details more than once.

## VERIFYING SEX AND GENDER

There can be considerable difficulties for trans or intersex people who are not able to establish a link between previous and current identity documents. This is particularly problematic for people who attempt to gain legal gender recognition outside their country of birth or nationality. For example, in some cases a person's original identification documents cannot be updated because the issuing country does not allow trans people or those with intersex variations to amend their name, sex, and/or gender details.

Other people may not have any identity documents, including many refugees and asylum seekers. Refugees by definition are unable, or unwilling for reasons of fear, to avail themselves of the protection of their country of nationality.<sup>41</sup> This is likely to mean they are no longer able to access official records of their identity once they are accepted as refugees in another country. Many refugees flee without necessary identity documents. Trans refugees (and those intersex refugees who have transitioned) face the additional barrier of having to establish a link between their previous sex and their current sex and/or gender identity. As refugees, they are unable to return to their country of origin in order to verify their identity and typically cannot obtain documents issued under their previous name, sex or gender identity. This can have ongoing implications when they are required to verify details such as an employment history or qualifications.

The particular difficulties faced by trans refugees can have serious consequences at the point of entry. In many countries, refugees and undocumented individuals are held in detention centers while (a) their claim for asylum is processed and (b), if their claim is rejected, pending their removal from the country. If a trans person does not have accurate documentation, this can mean that they are placed in incorrect detention centers. For example, in the United States, there have been numerous stories of trans women (often trans women of color) being subjected to significant violence and abuse because they have been placed in a male detention center.

There can be considerable difficulties for trans or intersex people who are not able to establish a link between previous and current identity documents.

# SOME COMMON ARGUMENTS AND POSSIBLE RESPONSES

## ARGUMENTS ABOUT IDENTITY FRAUD

### ARGUMENT:

#### PEOPLE WILL CREATE A NEW GENDER IDENTITY TO HIDE A CRIMINAL PAST

Someone can attempt to hide past crimes by changing their name and gender. This could be used by an individual to try to hide their history of past offenses and reduce the stigma associated with a criminal past and/or limit a sentence imposed for a subsequent offense.

### RESPONSE:

#### GENDER RECOGNITION LAWS ENABLE MATCHING TO CHECK CRIMINAL RECORDS

- Someone's criminal record does not disappear simply because they change their name or gender marker.
- Identity vetting processes require all previous names to be disclosed.
- Good practice examples enable trans people to provide all previous names to a security vetting agency, without these being disclosed to a prospective or current employer.<sup>42</sup> This protects trans applicants' privacy while ensuring records held under any previous names are checked.

### ARGUMENT:

#### PEOPLE WILL CHANGE THEIR GENDER TO TAKE ON A FRAUDULENT IDENTITY

Some people will change their name, sex or gender identity to commit an illegal or deceptive act and avoid being caught.

### RESPONSE:

#### GENDER RECOGNITION LAWS MATCH PREVIOUS AND CURRENT IDENTITIES

- While gender recognition laws have restrictions on disclosing information about a person's sex assigned at birth, they enable a person's current and previous identity to be matched in certain circumstances, including for fraud or other criminal investigations.
- There is no evidence that simplified legal gender recognition laws have resulted in greater levels of fraud. For example, the Dutch authorities investigated this issue in depth before reforming their laws.<sup>43</sup>
- There are other legal remedies for addressing fraud.
- In most countries, people are free to change their name for any nonfraudulent purpose. Allowing people to also change their gender marker to match their current identity poses no additional risk.
- A person wanting to successfully commit an illegal or deceptive act and avoid being caught is far more likely to change other aspects of their identity, such as their name and date of birth. Changing one's gender identity involves a lot more effort and is more likely to attract attention.
- Where trans individuals are unable to access recognition, it is more likely that they will present identification documents which do not reflect their presentation. This creates an environment where incongruent identity documents are normalized and authorities become desensitized to incongruent documentation. It is only by facilitating access to congruent documentation, so that most people have accurate documentation, that there will be a culture in which document fraud actually stands out.

## ARGUMENTS ABOUT SECURITY RISKS

### ARGUMENT:

#### SELF-DECLARED GENDER IDENTITY REMOVES NECESSARY CHECKS AND BALANCES

Requiring additional evidence, including from medical experts, verifies someone's gender identity.

### RESPONSE:

#### LEGAL GENDER RECOGNITION DOES NOT INCREASE SECURITY RISKS

- Security and antifraud systems already manage changes being made to people's key personal information, such as their names. Allowing people to change their gender markers more easily does not create any new risks.
- Current laws protecting against fraud are unchanged by gender recognition laws.
- There is no evidence of any case where a person has used liberal legal recognition rules to engage in criminal activities or activities which threaten state security.
- The World Professional Association for Transgender Health (WPATH) asserts that medical evidence should not be necessary for trans people to gain legal gender recognition. It has said "no particular medical, surgical, or mental health treatment or diagnosis is an adequate marker for anyone's gender identity, so these should not be requirements for legal gender change."<sup>44</sup>
- WPATH has urged governments to adopt "simple and accessible administrative procedures" enabling trans people's self-defined gender identity to be legally recognized.
- It would be discriminatory to require trans people or those with intersex variations to provide more information than other people in order to verify their identities.

### ARGUMENT:

#### TERRORISTS WILL CHANGE THE SEX ON THEIR PASSPORTS TO SNEAK INTO ANOTHER COUNTRY

If people are listed on a database of terrorist suspects, it will be much easier for them to avoid detection at the border if they change their gender marker and impersonate someone of a different sex or gender identity.

### RESPONSE:

#### ANY CHANGES TO PASSPORTS CAN BE TRACED BACK TO PREVIOUS PASSPORT DETAILS

- Any formal, legal change to passport details can be traced back to a person's original passport.
- Border control and airport security officials have access to biometric data that is a much more reliable way to detect someone's identity than simply relying on name, sex, or gender identity.
- Someone who amends a passport without undergoing any form of medical transition is likely to present as gender nonconforming. The extra scrutiny that gender nonconforming people typically face provides no advantage to someone attempting identity fraud.

**ARGUMENT:****PEOPLE WILL CONTINUOUSLY CHANGE THEIR IDENTITY**

It will become very difficult to verify someone's identity and records over time if they keep changing their name, sex, or gender identity.

**RESPONSE:****CHANGING THESE DETAILS IS NOT A LIGHT-HEARTED DECISION**

- Even when the process for changing sex or gender details has been simplified, the impact for an individual is significant and the process is time-consuming. Therefore changing these details remains a considered decision.
- Simplifying the legal gender recognition process facilitates access to people currently unable to have their gender identity legally recognized. This means that the number of people making applications will likely increase. However, there is no evidence that the number of applications per person increases.
- Systems are already in place to check and manage changes to a person's identity. For example, names can change more than once in a person's lifetime and this is effectively dealt with by current security and antifraud measures.
- Multiple changes in identification are not, in themselves, a bad thing. The most important consideration must be whether a person's identity documents accurately reflect their self-identification and self-presentation.



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# CONCLUSION

Every person has the right to define their gender identity, which is a fundamental part of who they are. Yet most trans people around the world have no form of identification that verifies their gender identity. Instead, official documents contain the sex, and often the name, assigned to a person at birth. This exposes trans people to discrimination and undermines their right to personal security.

Conversely, legal gender recognition enables greater consistency between different forms of identification. Without such protection, people's right to privacy is at risk when incongruent identity documents result in inappropriate questioning or personal searches.

New policies, supported by technological developments, demonstrate that identity verification is not undermined when people are able to self-define their sex or gender identity. At some point, biometric data may remove the need for sex or gender details to be used for identity verification or surveillance purposes at all. This was one of the demands of the Third International Intersex Forum, which recommended that "in the future, as with race or religion, sex or gender should not be a category on birth certificates or identification documents for anybody."<sup>46</sup>

There is no evidence that gender recognition laws are being used to commit identity fraud or to breach national security. Countries that have introduced progressive laws based on self-determination have yet to report any fraudulent incidents. Sufficient protections exist to address any such attempts.

Human rights standards clearly indicate that national security concerns do not override other human rights. United Nations experts and community organizations have started to identify the disproportionate impact of counter-terrorism measures on trans people's right to recognition before the law.<sup>47</sup> To date, there is no similar analysis of how they affect people with intersex variations. In a climate where search and surveillance powers are increasing, it is important that the human rights issues they raise for both trans and intersex people are given greater attention.

## ENDNOTES

- 1 The License to Be Yourself report can be found online at: <http://www.opensocietyfoundations.org/reports/license-be-yourself> and the accompanying animated video at: [www.osf.to/TransRights](http://www.osf.to/TransRights)
- 2 This brief is not a comprehensive summary of the relevant issues for people with intersex variations. Specific examples have been included to encourage greater dialogue between trans and intersex activists. The author is very grateful to the intersex activists who gave feedback on the resources in this series.
- 3 For example, Amnesty International (2014) *The State Decides Who I Am: Lack of Legal Gender Recognition for Trans People in Europe*; Grant, J. et al. (2011) *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*.
- 4 Lloyd, A. W. (2013) "Defining the Human: Are Transgender People Strangers to the Law," *Berkeley J. Gender L. & Just.*, Vol. 20, Issue 1, pp. 150-195. Accessed April 14, 2015, at: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1234&context=bgjlj>. Fogg Davis, H. (2014) "Sex-Classification Policies as Transgender Discrimination: An Intersectional Critique," *Perspectives on Politics*, Vol. 12, Issue 1, pp. 45-60. Accessed April 14, 2015, at: <https://heathfoggdavis.files.wordpress.com/2014/05/sex-classif.pdf>
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## ENDNOTES

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