



THE  
JOHN MARSHALL LAW SCHOOL

315 South Plymouth Court · Chicago, Illinois 60604

[www.jmls.edu](http://www.jmls.edu)

Tel: 312.427.2737

Fax: 312.427.9974

Via E-mail

20 February 2017

Corte Interamericana de Derechos Humanos  
Avenida 10, Calles 45 y 47 Los Yoses, San Pedro  
San José, Costa Rica

RE: Statement of Written Observations on the  
Request for an Advisory Opinion Submitted by the State of Costa Rica

The Honorable President and Judges of the Inter-American Court of Human Rights:

It is with great pleasure that the John Marshall Law School International Human Rights Clinic submits the enclosed Statement of Written Observations on the Request for an Advisory Opinion Submitted by the State of Costa Rica.

We originally submitted these Observations on 9 December 2016. The Honorable Court asked us on 14 February 2017 to resubmit them with a signature. Our resubmitted Observations are enclosed.

Sincerely,

Steven D. Schwinn  
Professor of Law  
Co-Director,  
International Human Rights Clinic

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**INTER-AMERICAN COURT OF HUMAN RIGHTS**

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**REQUEST FOR AN ADVISORY OPINION  
SUBMITTED BY THE STATE OF COSTA RICA**

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**STATEMENT OF WRITTEN OBSERVATIONS  
BY THE JOHN MARSHALL LAW SCHOOL  
INTERNATIONAL HUMAN RIGHTS CLINIC**

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Steven D. Schwinn  
Professor of Law  
Director, Community Legal Clinics and  
Co-Director, International Human Rights Clinic

Sarah Dávila-Ruhaak  
Director, International Human Rights Clinic  
Adjunct Professor of Law

The John Marshall Law School  
International Human Rights Clinic  
315 South Plymouth Ct.



Also on the Observations:

Mark J. Grotto  
Devin Meyer  
Paulina Roberts  
Wei Xu

Dated: February 20, 2017

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## **INTEREST OF AMICUS CURIAE**

The John Marshall Law School International Human Rights Clinic (“IHRC”) is a non-profit, nonpartisan law school legal clinic dedicated to promoting and protecting human rights in the United States and around the world. The IHRC is part of The John Marshall Law School, a non-profit corporation located in Chicago, Illinois, and registered in the United States.

More information on the IHRC is available at The John Marshall Law School web-site, at <http://www.jmls.edu/clinics/international-human-rights/>.

## **INTRODUCTION**

The IHRC respectfully submits these Observations on the Request for an Advisory Opinion submitted by the State of Costa Rica. These Observations address the first two questions in the Court's Request: (1) "the level of protection provided by Articles 11(2), 18 and 24 in relation with Article 1 of the ACHR to the recognition of a person's name change, according to their gender identity"; and (2) "the compatibility of the practice of enforcing Article 54 of the Civil Code of Costa Rica, Law No. 63 of September 28, 1887, to persons wishing to change their name based on their gender identity, with Articles 11(2), 18 and 24, in relation with Article 1 of the Convention."

The IHRC concludes that the American Convention on Human Rights protects a person's right to change his or her name to conform with his or her gender identity or transsexual status; that Article 54 of the Civil Code of Costa Rica violates this right; and that the State of Costa Rica should provide a free, rapid and accessible administrative procedure to exercise this right.

## **OBSERVATIONS**

The American Convention on Human Rights protects a person's right to change his or her name to conform with his or her gender identity or transsexual status. This right is protected by Articles 11(2), 18 and 24, among other Articles, in conjunction with Article 1 of the Convention. The right means that a State may not create obstacles to a person's right to change his or her name, and that a State must affirmatively facilitate a person's right to change his or her name.

Article 54 of the Civil Code of Costa Rica violates this right. The required judicial procedure in Article 54 creates an unnecessary obstacle to the exercise of this right; Costa Rica has not articulated a reason for the judicial procedure; and the procedure raises the possibility of

discriminatory enforcement of the right. The State of Costa Rica should provide a free, rapid and accessible administrative procedure to exercise this right.

I. The Convention Protects a Right to Change a Name.

The American Convention on Human Rights protects a person's right to change his or her name to conform with his or her gender identity or transsexual status. This right is protected by Article 11(2) (the right to privacy), Article 18 (the right to a name), and Article 24 (the right to equal protection), in conjunction with Article 1.

A. Article 11(2) Protects the Right to Change a Name.

Article 11(2) provides, "No one may be the objective of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation." The right to privacy in Article 11(2) is a broad right that encompasses sexual identity, gender identity, and transsexual status. As a result, it must also encompass a person's right to change his or her name, consistent with his or her sexual identity, gender identity, or transsexual status. Therefore, the right to privacy in Article 11(2) protects a person's right to change his or her name without unnecessary interference by the State.

This Court has determined that the concept of privacy protected by Article 11(2) "is an ample concept that is not subject to exhaustive definitions."<sup>1</sup> It "includes, among other protected realms, the *sex life* and the *right to establish and develop relationships* with other human beings."<sup>2</sup> In particular, it "includes the way in which *the individual views himself* and to what extent and *how he decides to project this view to others*."<sup>3</sup>

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<sup>1</sup> *Case of Karen Atala Riffo and Daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 162 (internal citations omitted).

This Court has determined that this broad right to privacy encompasses a person’s sexual identity. In the *Case of Karen Atala Riffo and Daughters v. Chile*, this Court held that the domestic Chilean courts violated the petitioner’s right to privacy when they inappropriately considered her sexual orientation in determining the custody of her three girls. This Court ruled that the petitioner’s sexual orientation was a private matter, not relevant to the legal standard for custody (the best interest of the children), and that the domestic courts therefore should not have considered it in determining custody.<sup>4</sup>

Because this broad right to privacy encompasses a person’s sexual identity, it must also encompass a person’s gender identity and transsexual status. And because a person’s name is essential to a person’s gender identity and transsexual status, this broad right to privacy must also protect a person’s right to change his or her name. In other words, a person’s name is essential to his or her “sex life” and his or her ability and “right to establish and develop relationships with other human beings.”<sup>5</sup> It is also essential to “the way in which *the individual views himself* and to

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<sup>2</sup> *Case of Karen Atala Riffo and Daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 162 (internal citations omitted) (emphasis added).

<sup>3</sup> *Case of Karen Atala Riffo and Daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 162 (internal citations omitted) (emphasis added).

<sup>4</sup> *Case of Karen Atala Riffo and Daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 166 (“[T]he reason given by the courts for interfering in Ms. Atala’s private life was the same one used to justify the discriminatory treatment . . . , namely, the alleged best interest of the three girls. . . . [A]lthough that principle is related *in abstracto* to a legitimate goal . . . , the measure was unsuitable and disproportionate to achieve that purpose, since the domestic courts should have limited themselves to examining parental behavior—which could be part of their private life—but without exposing and scrutinizing Ms. Atala’s sexual orientation.”).

<sup>5</sup> *Case of Karen Atala Riffo and Daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 162 (internal citations omitted).

what extent and *how he decides to project this view to others.*”<sup>6</sup> In short, a person’s name—and his or her ability to change it—is part of his or her right to privacy.

The European Court of Human Rights has confirmed this conclusion. That Court determined in *Case of Christine Goodwin v. The United Kingdom* that “[u]nder Article 8 of the [European] Convention [which protects the right to private life], where the notion of personal autonomy is an important principle underlying the interpretation of its guarantees, protection is given to the personal sphere of each individual, including *the right to establish details of their identity as individual human beings.*”<sup>7</sup> Based on this broad right to private life, the Court held that the United Kingdom violated the right to private life in Article 8 of the European

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<sup>6</sup> *Case of Karen Atala Riffo and Daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 162 (internal citations omitted) (emphasis added).

<sup>7</sup> *Case of Christine Goodwin v. The United Kingdom*, (No. 28957/95), Judgment of July 11, 2002, para. 90 (emphasis added). Cf. *Case of Pretty v. The United Kingdom* (No. 2346/02), Judgment of July 29, 2002, para. 61 (“the concept of ‘private life’ is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person . . . . It can sometimes embrace aspects of an individual’s physical and social identity . . . . Elements such as, for example, *gender identification, name* and sexual orientation and sexual life fall within the personal sphere protected by Article 8 . . . . Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world . . . . Although no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees.”) (emphasis added); *Case Peck v. The United Kingdom*, (No. 44647/98), Judgment of April 28, 2003, para. 57 (“Private life is a broad term not susceptible to exhaustive definition. The Court has already held that elements such as *gender identification, name, sexual orientation* and sexual life are important elements of the personal sphere protected by Article 8. That Article also protects a *right to identity* and personal development, and the right to establish and develop relationships with other human beings and the outside world and it may include activities of a professional or business nature.”) (emphasis added).



Convention when it refused to recognize the legal implications of the petitioner’s sex re-assignment surgery.<sup>8</sup>

The Committee of Ministers of the Council of Europe was even more specific in protecting a person’s right to change his or her name as a component of the “right to respect for private and family life.” The Committee recommended that “[m]ember states should take appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by making possible *the change of name and gender in official documents in a quick, transparent and accessible way.*”<sup>9</sup> The Committee went on to recommend that “member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.”<sup>10</sup>

The European right to private life has the same or very similar contours and dimensions as the right to privacy in Article 11(2) of the Inter-American Convention. Just as the European right to private life encompasses a person’s right to change his or her name and gender

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<sup>8</sup> *Case of Christine Goodwin v. The United Kingdom*, (No. 28957/95), Judgment of July 11, 2002, paras. 71 – 93. *See also I. v. The United Kingdom*, (No. 25680/94), Judgment of July 11, 2002. Since the *Case of Christine Goodwin v. The United Kingdom*, the European Court of Human Rights has repeatedly reaffirmed that the right to private life in Article 8 included gender identity. *See, e.g., Van Kuck v. Germany*, (No. 35968/97), Judgment of December 9, 2003; *L. v. Lithuania*, (No. 27527/03), Judgment of September 11, 2007; *P.V. v. Spain*, (No. 35159/09), Judgment of November 30, 2010.

<sup>9</sup> Council of Europe, 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, March 31, 2010, para. 21 (emphasis added).

<sup>10</sup> Council of Europe, 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, March 31, 2010, para. 21.

identification “in a quick, transparent and accessible way,”<sup>11</sup> the right to privacy in Article 11(2) of the Inter-American Convention encompasses that right, too.

B. Article 18 Protects the Right to Change a Name.

Article 18 provides, “Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.”

The right to a name in Article 18 encompasses more than just a person’s moniker. It also encompasses a person’s identity, including a person’s sexual identity, gender identity, and transsexual status. In other words, the right to a name includes a person’s right to say who they are and to define themselves in their most intimate sexual identities. Therefore, the right to a name in Article 18 includes a person’s right to change his or her name consistent with his or her identity without restriction by the State.<sup>12</sup>

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<sup>11</sup> Council of Europe, 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, March 31, 2010, para. 21.

<sup>12</sup> This right is also protected by Article 3, the right to a juridical personality. Article 3 provides, “Every person has the right to recognition as a person before the law.” It includes a right to an identity, and a right to a name. *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014, para. 267 (quoting OAS, “Inter-American Program for a Universal Civil Registry and ‘the Right to Identity,’” resolution AG/RES. 2286 (XXXVII-0/07) of June 5, 2007; Resolution AG/RES. 2362 (XXXVIII-0/08) of June 3, 2008, and Resolution AG/RES.2602 (XL-0/10) of June 8, 2010). *Cf.* Opinion adopted by the Inter-American Juridical Committee on the scope of the right to identity, August 10, 2007, paras. 11(2), 12 and 18(3)(3).

This right is also protected by Article 13, the right to expression. Article 13 of the Convention “encompasses the right to express one’s own sexual orientation and *gender identity* and that this kind of expression enjoys a special level of protection under Inter-American instruments, because it conveys an integral element of personal identity and dignity.” Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV (Hate Speech and Incitement to Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015, para. 5 (emphasis added).

This Court has determined that the right to a name “constitutes a basic and essential element of the identity of each person, without which he cannot be recognized by society or registered by the State. States . . . have the obligation not only to protect the right to a name, but also to provide the necessary measures to facilitate the registration of the individual immediately after his birth.”<sup>13</sup> More particularly, “States must ensure that the individual is registered with the name *chosen by that person* or by his or her parents, according to the moment of registration, *without any type of restriction* of the right or interference in the decision to choose the name. Once the individual has been registered, States must *guarantee the possibility of preserving and re-establishing the name* and surname.”<sup>14</sup>

The General Assembly of the Organization of American States has similarly recognized a broad right to a name under Article 3, the right to a juridical personality. The General Assembly has indicated the right to a name is essential to a person’s identity and personality, and to a person’s civic and familial relationships.<sup>15</sup> Moreover, the General Assembly and the Inter-

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*See also* The Yogyakarta Principles, Principle 19. March 2007 (the right to freedom of opinion and expression “includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means . . .”).

<sup>13</sup> *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014, para. 268 (quoting *Case of the Yean and Bosico Girls v. Dominican Republic*, paras. 182 and 183, and *Case of Contreras et al. v. El Salvador*, para. 110).

<sup>14</sup> *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 184, and *Case of the Las Dos Erres Massacre v Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 2, 2009. Series C No. 211, para. 192 (emphasis added).

<sup>15</sup> *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014, para. 267 (citing OAS, “Inter-American Program for a Universal Civil Registry and ‘the Right to Identity,’” resolution AG/RES. 2286 (XXXVII-0/07) of June 5, 2007; Resolution AG/RES. 2362 (XXXVIII-0/08) of June 3, 2008, and Resolution AG/RES. 2602 (XL-0/10) of June 8, 2010 (“recognition of the identity of persons is one of the means through which observance of the rights to juridical

American Juridical Committee have also determined that the right to a name is essential to the protection of other fundamental human rights.<sup>16</sup>

The broad right to a name under Article 18 includes a person's right to change his or her name to conform with his or her gender identity or transsexual status. This right to change names is a "basic and essential element of the identity of [the] person,"<sup>17</sup> it is essential to a person's relationships, and it is essential to protect other fundamental rights. It protects a name "chosen by that person," and requires the state to "guarantee the possibility of preserving and re-establishing the name," "without any type of restriction."<sup>18</sup>

C. Article 24 Protects the Right to Change a Name.

Article 24 provides, "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law." Just as the right to privacy and

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personality, a name, a nationality, civil registration, and family relationships is facilitated . . . ."))).

<sup>16</sup> *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014, para. 267 (quoting *Case of Gelman v. Uruguay*, para. 123 ("the failure to recognize identity may signify that the individual has no legal record of his existence, making it difficult for him to exercise fully his civil, political, economic, social and cultural rights."); *Case of Cotreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011. Series C No. 232, para. 112 ("the 'right to identity is consubstantial to human rights and dignity' that that, consequently, 'it is a fundamental human right opposable *erga omnes* as an expression of a collective interest of the international community as a whole, which admits neither annulment nor suspension in the cases established in the American Convention.")).

<sup>17</sup> *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014, para. 268 (quoting *Case of the Yean and Bosico Girls v. Dominican Republic*, paras. 182 and 183, and *Case of Contreras et al. v. El Salvador*, para. 110).

<sup>18</sup> *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 184, and *Case of the Las Dos Erres Massacre v Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 2, 2009. Series C No. 211, para. 192 (emphasis added).

the right to a name protect a person’s right to change his or her name to conform with his or her gender identity or transsexual status, so, too, does the right to equal protection under Article 24.<sup>19</sup>

The right to equal protection “is the central, basic axis of the inter-American human rights system.”<sup>20</sup> It “springs directly from the oneness of the human family and is linked to the essential dignity of the individual.”<sup>21</sup> Equal protection is “irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified.”<sup>22</sup> It is a violation of equal protection “to subject human beings to differences in treatment that are inconsistent with their unique and congenerous character.”<sup>23</sup> A State may not make “any distinction, exclusion, restriction or preference which is based on any ground such as . . . sex . . . or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise

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<sup>19</sup> Article 1(1) also prohibits discrimination against individuals based on their sexual identity. This Court has explained the difference between Article 1(1) and Article 24: Article 1(1) “refers to the State’s duty to respect and guarantee ‘non-discrimination’ in the enjoyment of the rights enshrined in the American Convention, while Article 24 protects the right to ‘equal treatment before the law.’” *Apitz Barbera et al. v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 209.

<sup>20</sup> *Homero Flor Freire v. Ecuador*. Report No. 81/13. Merits. November 4, 2013, para. 88 (quoting IACHR, Application to the Inter-American Court of Human Rights, Karen Atala and daughters, September 17, 2000, para. 74; I/A Court H.R. *Legal Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03, September 17, 2003. Series A No. 18, para. 173.5).

<sup>21</sup> *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*. Advisory Opinion OC-4/84, January 19, 1984. Series A No. 4, para. 55.

<sup>22</sup> *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*. Advisory Opinion OC-4/84, January 19, 1984. Series A No. 4, para. 55.

<sup>23</sup> *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*. Advisory Opinion OC-4/84, January 19, 1984. Series A No. 4, para. 55.

by all persons, on an equal footing, of all rights and freedoms.”<sup>24</sup> The right to equal protection does not only prohibit a State from discriminating; it also requires a State to “adopt the affirmative measures needed to ensure the effective right to equal protection for all individuals.”<sup>25</sup>

This Court has determined that the right to equal protection applies to persons based on sexual identity.<sup>26</sup> In particular, this Court has determined that the right to equal protection prohibits a State from discriminating against a person based on his or her sexual identity. Thus, in *Case of Atala Riffo and Daughters v. Chile* this Court held that the State violated “the right to equality enshrined in Article 24, in conjunction with Article 1(1) of the American Convention,” when domestic courts improperly considered the petitioner’s sexual orientation in determining custody of the petitioner’s children.<sup>27</sup>

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<sup>24</sup> *Homero Flor Freire v. Ecuador*. Report No. 81/13. Merits. November 4, 2013, para. 90 (quoting I/A Court H.R. *Legal Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03, September 17, 2003. Series A No. 18, para. 92; *Fourth Progress Report of the Special Rapporteurship on Migrant Workers and their Families in the Hemisphere*, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, Annual Report IACHR 2002, March 7, 2003, para. 87; IACHR, report on the Merits No. 4/01, Case 11,626, *Maria Eugenia Morales de Sierra* (Guatemala), January 19, 2001).

<sup>25</sup> *Homero Flor Freire v. Ecuador*. Merits. November 4, 2013. No. 81/13, para. 93.

<sup>26</sup> It is widely understood in international human rights law that the right to equal protection applies to persons based on sexual identity. *See Case of Karen Atala Riffo and Daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, paras. 87 – 91 (surveying the European Court of Human Rights and the United Nations). *See also Zimbabwe Human Rights NGO Forum v. Zimbabwe*, 128 AHRLR 2006, para. 169 (concluding that equal protection applies to sexual orientation under the African Charter on Human and Peoples’ Rights).

<sup>27</sup> *Case of Karen Atala Riffo and Daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 146.

Because the right to equal protection extends to sexual identity, it also must extend to gender identity and transsexual status. In particular, it must protect a person's right to change his or her name to conform with his or her gender identity and transsexual status. Under Article 1(1), it means that a State cannot discriminate against a person based on his or her gender identity or transsexual status in regard to his or her exercise of the right to change his or her name under Articles 11(2) and 18, discussed above. Under Article 24, it means that a State may not discriminate against a person based on his or her gender identity or transsexual status in regard to his or her ability to change his or her name under domestic law. Taken together, these provisions mean that the State cannot discriminate with respect to a person's right to change his or her name to conform with his or her gender identity or transsexual status, and that the State must affirmatively provide for that right on an equal basis.

II. Article 54 of the Civil Code of Costa Rica Violates the Right to Change a Name.

Because a person has a right under Articles 11(2), 18, and 24 of the Convention to change his or her name to conform to his or her gender identity or transsexual status, the State is therefore prohibited from unnecessarily restricting this right. Indeed, the State has an obligation to facilitate this right. Under these Articles, in conjunction with Article 1(1), this means that Costa Rica must provide a person with a free, rapid and accessible administrative procedure to exercise this right.

Articles 18, 11(2) and 24 each contain a standard for determining when a State violates the right and for determining the State obligations to facilitate the right. Thus, under Article 18, "States must ensure that the individual is registered with the name chosen by that person or by his or her parents, according to the moment of registration, *without any type of restriction* of the

right or interference in the decision to choose the name. Once the individual has been registered, States must *guarantee the possibility of preserving and re-establishing the name and surname.*<sup>28</sup> Article 11(2) prohibits “any *arbitrary or abusive interference* with the private life of persons, and therefore the realm of privacy is exempt and immune to *abusive or arbitrary intrusion or aggression* by the public authorities.”<sup>29</sup> And under Article 24, A State may not make “any distinction, exclusion, restriction or preference *which is based on any ground such as . . . sex . . . or other status*, and *which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms,*”<sup>30</sup> and a State must “adopt the *affirmative measures needed to ensure the effective right to equal protection for all individuals.*”<sup>31</sup> Taken together, these provisions require the State to allow a person to change a name without restriction, to remove any arbitrary or abusive obstacles to the right to change a name, and to provide affirmative measures to allow persons to exercise that right on an equal basis.

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<sup>28</sup> *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 184, and *Case of the Las Dos Erres Massacre v Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 2, 2009. Series C No. 211, para. 192 (emphasis added).

<sup>29</sup> *Case of Karen Atala Riffo and Daughters v. Chile.* Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 225 (emphasis added).

<sup>30</sup> *Homero Flor Freire v. Ecuador.* Report No. 81/13. Merits. November 4, 2013, para. 90 (quoting I/A Court H.R. *Legal Status and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03, September 17, 2003. Series A No. 18, para. 92; *Fourth Progress Report of the Special Rapporteurship on Migrant Workers and their Families in the Hemisphere*, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, Annual Report IACHR 2002, March 7, 2003, para. 87; IACHR, report on the Merits No. 4/01, Case 11,626, *Maria Eugenia Morales de Sierra* (Guatemala), January 19, 2001) (emphasis added).

<sup>31</sup> *Homero Flor Freire v. Ecuador.* Merits. November 4, 2013. No. 81/13, para. 93 (emphasis added).



Article 54 of the Civil Code of Costa Rica violates these principles. It requires any Costa Rican who seeks to change his or her name to use a judicial proceeding only.<sup>32</sup> The judicial proceeding creates an obstacle to any person who seeks to change his or her name, and thus fails to ensure that a person can change his or her name “without any type of restriction,” as required by Article 18.<sup>33</sup> Moreover, Costa Rica has not provided a reason for imposing this obstacle, which suggests that it may be “arbitrary and abusive” in violation of Article 11(2).<sup>34</sup> Finally, while Article 54 of the Civil Code of Costa Rica seems to apply equally on its face to any Costa Rican who seeks to change his or her name, the judicial procedure will likely impose an undue hardship on transsexual persons and raise the possibility of discriminatory enforcement (as compared to a free, rapid and accessible administrative procedure). If so, Article 54 would violate Article 24 of the Convention.

Costa Rica could comply with Articles 18, 11(2) and 24 by replacing the judicial procedure in Article 54 of the Civil Code of Costa Rica with a free, rapid and accessible administrative procedure. This procedure should require only minimal effort on the part of the person seeking a name change—only that effort that is necessary for legitimate State purposes; it should provide no discretion on the part of the State agent; it should be free; it should be rapid; and it should apply equally to all Costa Ricans.

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<sup>32</sup> Civil Code of Costa Rica, art. 54 (“Every Costa Rican registered in the Registry of Civil Status can change your name with the permission of the Court which shall be by the procedures of voluntary jurisdiction promoted for that purpose.”).

<sup>33</sup> *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 184, and *Case of the Las Dos Erres Massacre v Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 2, 2009. Series C No. 211, para. 192.

<sup>34</sup> *Case of Karen Atala Riffo and Daughters v. Chile. Merits, Reparations and Costs*. Judgment of February 24, 2012. Series C No. 239, para. 225.

## CONCLUSION

Articles 11(2), 18 and 24 of the American Convention on Human Rights protects the right of a person to change his or her name to conform with his or her gender identity or transsexual status. As a result, States may not create obstacles to a person's right to change his or her name, and States must affirmatively facilitate a person's right to change his or her name.

Article 54 of the Civil Code of Costa Rica violates the right to change a name. The required judicial procedure in Article 54 creates an unnecessary obstacle to the exercise of this right; Costa Rica has not articulated a reason for the judicial procedure; and the procedure raises the possibility of discriminatory enforcement of the right. The State of Costa Rica should provide a free, rapid and accessible administrative procedure to exercise this right.

Respectfully Submitted,



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Steven D. Schwinn  
Professor of Law  
Director, Community Legal Clinics  
Co-Director, International Human Rights Clinic

Sarah Dávila-Ruhaak  
Director, International Human Rights Clinic  
Adjunct Professor of Law

The John Marshall Law School  
International Human Rights Clinic



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