**REFLECTION | REFLEXÃO** 



## Inclusion or illusion of gender identity in the country with the highest transgender murders: a Brazilian critical essay

Inclusão ou ilusão da identidade de gênero no país com o maior número de assassinatos de transgêneros: um ensaio crítico brasileiro

Inclusión o ilusión de la identidad de género en el país con el mayor número de asesinatos transgéneros: ensayo crítico brasileño

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#### ABSTRACT

Objective: to reflect on the implications and risks associated with Brazil's new identification registry for the trans population. Method: this is a reflective study that explores the concept of social identity as a complex phenomenon, grounded in the principles of self-determination and human dignity. To accomplish this, it draws upon feminist post-humanist and critical perspectives, challenging individuals' biological essentialism, with a particular focus on Judith Butler's theory. **Results:** Brazil is currently implementing a national identification registry that can recognize trans individuals' gender identity. This manuscript addresses the implications of the new national identification system, including potential setbacks and advances in the struggle for trans rights. To safeguard people's identity and safety, this article advocates for a novel national government-issued identification system that stores personal information in central databases for linking purposes, displaying only the preferred name and gender marker on the identification card. **Final considerations and implication for practice:** the high rates of anti-trans violence in Brazil emphasize the urgent need for the new system. Early recognition and respect for gender identity are integral to promoting the success of the new national identification system.

Keywords: Civil Registration; Gender Identity; Human Rights; Social Identification; Violence.

#### RESUMO

Objetivo: refletir sobre as implicações e os riscos associados ao novo registro de identificação do Brasil para a população trans. Método: trata-se de estudo reflexivo que explora o conceito de identidade social como um fenômeno complexo, fundamentado nos princípios da autodeterminação e da dignidade humana. São consideradas perspectivas feministas pós-humanistas e críticas, que desafiam o essencialismo biológico dos indivíduos, com foco especial na teoria de Judith Butler. **Resultados:** o Brasil está atualmente implementando um registro nacional de identificação capaz de reconhecer a identidade de gênero das pessoas trans. Este estudo aborda as implicações do novo sistema nacional de identificação, incluindo possíveis retrocessos e avanços na luta pelos direitos das pessoas trans. Para proteger a identidade e a segurança dessas pessoas, este artigo defende a criação de um novo sistema de identificação emitido pelo governo que armazene informações pessoais em bancos de dados, exibindo apenas o nome social e o marcador de gênero no cartão. **Considerações finais e implicações para a prática:** as altas taxas de violência contra pessoas trans no Brasil destacam a necessidade urgente do novo sistema. O reconhecimento precoce e o respeito pela identidade de gênero são fundamentais para promover o sucesso do novo sistema.

Palavras-chave: Direitos Humanos; Identidade de Gênero; Identificação Social; Registro Civil; Violência.

#### RESUMEN

**Objetivo:** reflexionar sobre las implicaciones y los riesgos asociados con el nuevo registro de identificación de Brasil para la población trans. **Método:** este es un estudio reflexivo que explora el concepto de identidad social como un fenómeno complejo, fundamentado en los principios de autodeterminación y dignidad humana. Se consideran perspectivas feministas poshumanistas, que desafían el esencialismo biológico, con un enfoque particular en la teoría de Judith Butler. **Resultados:** Brasil se encuentra implementando un registro nacional de identificación que puede reconocer la identidad de género entre personas trans. Este estudio aborda las implicaciones del nuevo sistema nacional de identificación, incluyendo posibles retrocesos y avances en la lucha por los derechos de las personas trans. Para proteger la identidad y la seguridad de estas personas, este artículo aboga por la creación de un nuevo sistema de identificación emitido por el gobierno que almacene información personal en bases de datos, mostrando solo el nombre social y el marcador de género en la tarjeta. **Consideraciones finales e implicaciones para la práctica:** las altas tasas de violencia contra personas trans en Brasil enfatizan la necesidad urgente del nuevo sistema. El reconocimiento temprano y el respeto por la identidad de género son fundamentales para promover el éxito del nuevo sistema nacional de identificación.

Palabras clave: Derechos Humanos; Identidad de Género; Identificación Social; Registro Civil; Violencia.

### INTRODUCTION

Worldwide, the trans population is considered one of the most vulnerable population groups, facing discrimination, stigma, and multiple denials of the right to be and to live. In other words, the right to exist in the world is often questioned.<sup>1,2</sup> In the field of health, this multiplicity of violations generates barriers to accessing care. Numerous studies point to discriminatory processes carried out by professionals as a factor that hinders access to and use of healthcare services, with the denial of their names and the exposure of their gender identity being the most commonly reported events.<sup>3-5</sup> Studies indicate that seeking healthcare, for instance, is often delayed due to discriminatory events experienced in the past.<sup>6,7</sup>

This situation has deleterious consequences for the population, such as alarming rates of sexually transmitted infections, depression, anxiety, and suicidal behavior.<sup>8-10</sup> Furthermore, it is recognized worldwide that violence, often due to polyvictimization, begins in childhood and extends throughout life.<sup>11,12</sup> Brazil faces high levels of violence against trans individuals and a systematic lack of state protection, ranking first globally for murders of trans people.<sup>13</sup>

Moreover, the lack of public policies results in a precarious social environment for the trans population. The estimated life expectancy is not more than 35 years of age,<sup>13</sup> although in the Brazilian context, a gap exists in counting deaths among trans and non-binary individuals. In other words, no official records of deaths exist regarding gender identity. The actual counting of deaths has been carried out by groups and associations, such as the Brazilian National Association of Transvestites and Transsexuals (ANTRA - *Associação Nacional de Travestis e Transexuais*), which gather information through newspaper reports and healthcare facilities.<sup>13</sup> Therefore, the estimate is that, despite holding critical positions in the ranking of murders, Brazil still suffers from a significant underreporting of trans' deaths, greatly hampered by current public policies.

At this time, Brazil is in the process of building new ways to address data gaps regarding identification documents, particularly gender markers, and names. The country is debating the implementation of a new national identification registry with the adoption of a unique coding system. However, it is possible that the new identification document system, while innovative, could also pose significant risks for the trans population. One dangerous system change occurred under the administration of former Brazilian President Jair Bolsonaro, who implemented a policy widely seen as detrimental to trans persons. Departing from the previous practice in Brazilian identification documents, the government began requiring the inclusion of information about sex assigned at birth, preferred "social names" (the social name is the name a trans person chooses to be called) as well as civil registry names (assigned name at birth) on official documents. A trans person having both names on their identification document could then pose confidentiality and safety issues for them. In this context, this article aims to reflect on the implications and risks associated with Brazil's new identification registry for the trans population.

### METHODS

This is a reflective essay developed through a critical analysis of the risks posed by the Brazilian civil identification system, especially in a context that exposes the gender identities of trans and non-binary individuals. Given the complexity of this topic, the reflection has been divided into two thematic components. The first component involves the analysis of "name" as a fundamental element in the (re)construction of "gender markers" and the modulation of social identities. The second component examines the implications and risks of exposing "name" and "sex" in relation to "gender" on ID cards.

Conducted in March 2023, these reflections were driven by trans-activist groups' concerns regarding the new Brazilian civil identification system. No inclusion or exclusion criteria were established for the selection and search of bibliographies. Recognizing that an essay takes into account the authors' perspective and, consequently, subjectivity, this manuscript chose gender and language theories as the foundation for its reflections. These theoretical and methodological choices impose analytical limits on the study, an aspect that should be taken into account when interpreting the reflections produced in this manuscript.

Considering the central discussion of this manuscript revolves around social identity as a complex phenomenon,<sup>14</sup> as well as the principles of self-determination and human dignity John Austin's and Judith Butler's theories have been chosen for analysis, specifically speech act and gender as performative acts theories, respectively.<sup>15-17</sup>

The first, John Austin's "speech act" theory, argues that language goes beyond only factual description (constative language). According to Austin,<sup>15</sup> "speaking", based on socially constructed agreements about contexts and meanings of words, is actually "acting". On the other hand, Butler's theory interprets gender as a discursive construct rather than something innate and biological.<sup>17,18</sup> Thus, both Butler and Austin, in a sense, understand these phenomena as products and effects of discourses. Therefore, they are interconnected in a performance of acts, whether through spoken discursive expressions or through the reproduction of ways and forms of behaving and interacting in society.

For Butler, discourse, over time, once it stabilizes and characterizes differences, produces unequal categories of people. The first category includes gender identities that are regarded, from an essentialist perspective (biologically innate), as "original", namely, cisgender women and men. The other categories include dissonant identities, such as trans women, trans men, non-binary individuals, and the full spectrum of gender expressions.<sup>17,18</sup> As Butler criticizes, these dissonant bodies are not "mournable".<sup>19</sup> In other words, these bodies and lives have less social importance when compared to the "original categories" from an essentialist perspective.

Finally, the reflections resulted in two discussion categories: "The transcendent name: the significance of names in the (re) construction of gender markers"; and "Implications and risks of Brazil's new civil registration for the trans population". The final consideration of this manuscript focused on reflecting on the practical effects on the healthcare sector and nursing.

### **RESULTS AND DISCUSSION**

# The transcendent name: the significance of names in the (re)construction of gender markers

The understanding of bodies as social constructions recognizes that identities are influenced by culture and that bodies are inscribed within a set of meanings and social norms even before birth.<sup>16,20</sup> Thus, both the sex and gender attributed to bodies are social constructions affected by discourse over time, constituting a social identification of individuals.<sup>16,17,21,22</sup>

Contributing to Butler's theoretical proposal,<sup>16</sup> we brought to this discussion the speech act theory. By assuming that speaking is also an action, when discursive signs are attributed to gender - such as stating that a woman or a man is the one who performs certain acts, displays certain forms, or bodily behaviors - we are framing bodies in a form of discursive action that is also imperative (imposing a norm) and that stabilizes as a performative truth.<sup>15</sup> In other words, for someone to be considered a man or a woman, it is necessary to fulfill certain performances that society demands.<sup>16,17</sup>

Thus, sex, gender, sexuality, and the body are laden with interpretation and shaped by a trajectory of reproductions and assigned attributions as to what is feminine or masculine.<sup>21</sup> As such, no innate femininity or masculinity exists, rather it is molded and constructed by society.<sup>16,17,20</sup> In this regard, trans women and cisgender women mutually contribute to the construction of what represents femininity.<sup>21</sup> The same applies to categories within the male identity spectrum.

Thus, consciously or not, these individuals simultaneously reinforce each other to maintain a state of normalization and intelligibility of bodies, in order to ensure an identity within a dual system of men and women, with their boundaries of bodily features, gestures, and speech.<sup>16,17,21,23</sup> To the same extent, bodies that deviate from the expected performances within the male-female system are considered dissonant, and consequently, they bear the burden of social elimination-correction, such as having their names disrespected and facing multiple barriers to access services, including healthcare services.

In Butler's perspective,<sup>16,17</sup> there are no fixed or inherent categories of gender. Since gender identity represents a discursive stabilization of what it means to be a man or a woman, it also opens up the possibility for new identities to move between these two ends and, more importantly, to exist beyond them. In this sense, gender identity can take on positions that surpass a well-established system of comprehending bodies, such as gender fluidity or non-binary individuals, who navigate other identity spectrums and challenge the rigid binary concept of genders.

In a similar vein to the approach taken in understanding gender as a product of discourses, the "name" (male or female) can also be understood as a social construct and, therefore, discursive in nature. The name, along with socially expected behaviors and expressions for individuals, constitutes gender markers. Thus, when a name is bestowed upon a body, it assumes a social meaning. In other words, the body becomes enabled to navigate the world and, in conjunction with other markers, be recognized as either a man or a woman.<sup>24-26</sup> In this context, the world has conformed to the culture that names (whether social or civil) assigned to individuals should align with what is observed and, consequently, expected for bodies. Therefore, the name serves as yet another way to make a body intelligible to society.

For trans individuals, the name holds a special significance. It can symbolize overcoming the denial of their right to be who they are. The "name" is intrinsically linked to subjectivities that determine identity and affect a person's connection with social groups. The use of a "name" ensures individual autonomy and the capacity for self-determination for human beings to define their own identity.<sup>26</sup> It is not coincidental that the choice of a name by trans individuals is linked to the alleviation of suffering.<sup>27</sup> Often, after facing legal and administrative requirements, trans persons successfully changed their civil names. Afterwards, some trans people refer to the name assigned to them at birth as a "dead name", symbolizing, in part, the (re)construction of their identity.

The "death" of the "old name" (the name the person was registered with at birth), besides involving the subversion of socially imposed gender norms, can also be interpreted as a "speech act".<sup>15</sup> While the "registered name" was imposed by others, the new choice is an act that contributes to their self-determination and materializes their gender performance. In other words, the individual would declare "I baptize myself!" with their new social name.

For trans people, the choice of a "name" clearly constitutes a political act.<sup>26</sup> It allows a person to reconstruct an existence invalidated by the dissonance between the body and the name assigned at birth (e.g., a name considered feminine in a masculine body, and vice versa), including access to rights and state protection.<sup>26,28</sup> A trans woman, upon being recognized as a woman by the State, for instance, is able to access rights and protection from the Brazilian State against violence committed by intimate partners and others. This protection is not possible to access unless the trans woman is legally recognized as a woman.<sup>29</sup>

Unlike cisgender persons, those who identify as trans actively choose their name. Their name is permeated by experiences considering the array of obstacles that have shaped their lives. The passivity of the name assigned at birth is replaced by the social name, which represents an expression of desire and significance: a new baptism, a new name, a new life.<sup>26</sup>

# Implications and risks of Brazil's new civil registration for the trans population

For trans individuals, the ID card (civil registration) is a record laden with meaning, as it is an official way to translate their gender identity to society. Currently, in Brazil, a civil registry law allows trans people to change their gender marker on identity documents without the need for gender affirmation surgery. However, even with a new law criminalizing homophobia and transphobia in 2019, in practice, many bureaucratic and social obstacles to obtaining new records exist, such as requiring trans persons to obtain a court order or medical certificate.<sup>30</sup>

As mentioned, during the right-wing administration of former President Jair Bolsonaro, new ID cards began displaying the sex assigned at birth (biological sex) of trans persons. Another significant problem for trans persons was the presentation of their legal name as well as their "social name" on the same document, further exposing their identity to anyone who has access to the document and thus disregarding the trans person's right to self-identification. The attempt to expose gender identity could once again represent what some authors call "social death".<sup>29</sup> In other words, by implementing a policy that deepens social exclusion, it, in a way, protects the rigid boundaries that separate genders deemed as original and assigns increasing risks to non-conforming identities.

By adopting a new "social name" associated with the male or female gender, trans persons can incorporate other gender elements into their persona. This contributes to the construction and expression of their gender identity as their new social or civil name.<sup>26</sup> It provides a new meaning to the body, be it transfeminine, trans-masculine, or non-binary. The adoption of the new name does not necessarily depend on gender-affirming procedures, hormones, and other medical interventions that modify the body. The name itself is a "gender marker", one of the most important forms of "social surgery"<sup>31</sup> a trans person undergoes, marking a new birth.

In contrast to the body surgeries that a society guided by the imposition of cisgender norms expects from a trans person, "social surgery"<sup>31</sup> is inevitable for trans bodies. The term "social surgery", coined by Cortes,<sup>31</sup> an important Brazilian researcher in the field, refers to a complex process of changes. This process involves the relative abandonment of social practices used up until that moment, such as the replacement of goods and clothing that were often imposed on them, of memories, and, in some cases, of social groups to make way for the new existence, which is compatible with the person's existential reality.

Using the social name and appropriate pronouns (he/his, she/her) is a fundamental consideration in the daily lives of those who seek to care for individuals, whether they are trans or cisgender.<sup>26</sup> After the body, which is the first aspect observed by anyone, the name is one of the primary gender markers used in interactions and in the establishment of connections among human beings, especially when it comes to healthcare professionals. Perhaps the predominantly hetero-cisnormative framework that guides the care of individuals at times hinders the understanding of the true significance attributed to the simple act of addressing a person by their name (the one the person considers as true).

In this regard, it is important to reflect on the absence or rarity of misunderstandings and mistakes when addressing a cisgender person. This is because how people perceive these bodies, in theory, is already internalized. In other words, when communicating, people already interpret other bodies based on what they have learned as gestures and expressions that should be feminine or masculine. Since the names assigned to cisgender individuals typically represent what is culturally deemed feminine or masculine, there will rarely be a mistake when naming them.<sup>20</sup> On the other hand, in the specific case of trans individuals, it is important to reflect that, alarmingly, the practice of respect when naming them is not as natural as in cisgender bodies, even when the bodies exhibit the "feminine" or "masculine" characteristics that society expects.<sup>25,26</sup>

Disrespecting the name of a trans person unfailingly invalidates their social identity (re)constructed throughout their history.<sup>26</sup> In this way, this practice should be considered a questioning of the truth of their bodies and the recognition of their existence as a woman, man, or non-binary person. One way, through performative language,<sup>15</sup> is to create a distinction between bodies considered original and, consequently, correctly named, from other bodies the others, the distinct, the segregated, or as Butler also suggests, the bodies that are not susceptible to mourning.<sup>19</sup>

A variety of complications and impediments is in place for an official name change or a change in gender marker on different types of Brazilian documentation (e.g., birth certificate, government-issued ID card, Brazilian Health System (SUS – *Sistema Único de Saúde*) national health card, driver's license, student ID). Thus, many trans individuals have conflicting names and gender markers on various forms of identification, which may differ again from what appears on the new government-issued national ID card (civil registration). These inconsistencies represent a clear manifestation of trans necropolitics by the Brazilian State. In this context, this bureaucratic apparatus that systematically reinforces existing power hierarchies contributes to the marginalization of bodies deemed discordant by the binary gender system, making non-conforming identities even more susceptible to violence and social exclusion.<sup>32</sup>

Recent evidence shows that the further a trans body deviates from what is considered feminine or masculine by society, the greater the chances of experiencing violence.<sup>32</sup> Data from a national study in the U.S. found that being visible as a trans woman was associated with harassment and physical assault.<sup>33</sup> Access to appropriate identification aligning trans people's identities with that shown on their identification cards is an important form of protection against the incredible risk of anti-trans violence in Brazil. And it is known that previous measures of respect and recognition of gender identity are implemented, including the gender transition process, for better quality of life for trans people.<sup>34</sup>

Specifically, regarding the display of gender markers on the Brazilian ID card, it is important to emphasize that the situation is temporarily resolved. Through transactivist mobilization led by LGBTQIA+ rights advocacy organizations such as ANTRA, the current Federal Government assembled a task force with the aim of proposing modifications to the structure of the "gender marker" and "social name" sections on the national ID card, eliminating, in May 2023, the previously proposed method. Considering this scenario, it is imperative that the development of any public policy involving populations traditionally marginalized by the Brazilian state, including changes to the identification system and the ID card that affected trans and non-binary persons, includes representatives of these groups as protagonists in the process of social change.<sup>29</sup> The strengthening of social participation is urgent in the construction and reconstruction of public policies in the country.

# FINAL CONSIDERATIONS AND IMPLICATIONS FOR PRACTICE

Although the exposure of "gender markers" on ID cards has been temporarily overcome, the history of anti-trans policies in Brazil demonstrates the ongoing need to permanently uphold human rights. Challenging the biological essentialism of gender, which perpetuates inequalities among groups, means expanding the dimensions of care beyond the anatomy of the body. Comprehensive care for individuals (trans, non-binary, or cisgender) begins the moment we call them by their name.

Thus, the name, in addition to being a socially instituted element to ensure the intelligibility of bodies, holds special significance for trans and non-binary individuals, especially due to the variety of overlapping violent experiences throughout life. Therefore, respecting people's names is one of the most important care technologies that can be practiced, especially for healthcare professionals, including nurses. As demonstrated, the denial of the right to use one's name and the incorrect application of associated pronouns are frequently reported factors hampering access to healthcare services. Ensuring that individuals exercise their social identity means taking care to make gender self-determination a common practice in care spaces. This act, often perceived as trivial, has the capacity to diminish human suffering and prevent violence in various spheres of life, including healthcare services.

Furthermore, ensuring that gender marker records are stored exclusively in government databases, and not on ID cards, will potentially reduce risks to trans and non-binary populations. However, it is imperative to ensure that the creation of a unique record key is effectively implemented in all government databases. Brazil still lacks robust data on the transgender population. The few official data sets available for the LGBTQIA+ group are limited to the collected "sexual orientation" variable. In Brazil, the systematic collection of the "gender identity" variable only began in 2015 and is restricted to records of interpersonal and self-inflicted violence. Therefore, if gender markers are effectively monitored and the unique record key is successfully implemented, it will be possible to link national information systems. Consequently, with access to quality information by healthcare professionals, the tendency can be for care actions to be directed toward this population's real needs.

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