

International & Regional Norms on Gender Recognition

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While there is common vulnerability across the lesbian, gay, bisexual, and transgender (LGBT) population in Jamaica, recent studies show that the subset of trans and gender non-conforming (GNC) people confront unique characteristics and obstacles. Chief among these challenges are the trans community's disproportionate experience of homelessness, limited access to employment prospects, high levels of violence directed against them, and impediments to healthcare access are among these challenges.

According to the United Nations Development Programme (UNDP), the lack of legal gender recognition is one of the most challenging barriers to trans and gender-diverse people's social inclusion. Trans people are confronted on a daily basis with the reality of the lack of gender recognition under Jamaican law. There is no legislative or policy framework that allows trans people to have their gender identities formally recognized through changes on their birth certificates and other forms of identification.

IV. International & Regional Norms on Gender Recognition

The UN System

Jamaica has ratified the International Covenant on Civil and Political Rights, 1966 (ICCPR) and is therefore bound by its provisions including article 16 which provides that “[e]veryone shall have the right to recognition everywhere as a person before the law.” This provision has been interpreted by several human rights experts to require states to provide for gender recognition laws. Specifically, the Yogyakarta Principles plus 10 have opined in Principle 31 that “[e]veryone has the right to change gendered information in [identity] documents while gendered information is included in them.”⁴⁸ They go further to put forward that States have the following obligations, to:

- Ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose, and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licences, and as part of their legal personality;
- Ensure access to a quick, transparent and accessible mechanism to change names, including to gender-neutral names, based on the self-determination of the person;
- While sex or gender continues to be registered:
 - Ensure a quick, transparent, and accessible mechanism that legally recognizes and affirms each person’s self-defined gender identity;
- Make available a multiplicity of gender marker options;

Ensure that no eligibility criteria, such as medical or psychological interventions, a psycho-medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third party opinion, shall be a prerequisite to change one’s name, legal sex or gender;

Ensure that a person’s criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender.⁴⁹



The UN Office of the High Commissioner for Human Rights underscores the importance of laws which recognizes the gender identity of transgender persons by stating that such laws are “important in relation to protection from violence, torture and ill-treatment, discrimination, rights to health, education, employment and housing, access to social security, political participation and freedom of movement.”⁵⁰ It goes further to state that:

States should respect the physical and psychological integrity of transgender persons and legally recognize their self-identified gender without additional requirements that may violate human rights. States should provide for a simple administrative process, allow for recognition of non-binary identities, and give minors access to recognition of their gender identity.⁵¹

Inter-American System

Similarly, Jamaica has ratified the American Convention on Human Rights, 1969 (ACHR). Article 3 similarly provides for the right of all persons to be recognized as a person before the law. Moving beyond this provision, the Inter-American Court of Human Rights in an advisory opinion made clear that the promulgation of gender recognition legislation is a state obligation borne out of several human rights protected by the ACHR.⁵² The Court articulated the following:

The change of name, the rectification of the image and the rectification of the sex or gender in the public records and identity documents, so that they correspond to the self-perceived gender identity is a right protected by Article 18 (Right to a Name), but also by Articles 3 (Right to Recognition of Juridical Personality), 7(1) (Right to Personal Liberty), and 11(2) (Right to Privacy) of the American Convention. Consequently, pursuant to the obligation to respect and ensure rights without any discrimination (Articles 1(1) and 24 of the Convention), and the obligation to adopt domestic legal provisions (Article 2 of the Convention), States are obliged to recognize, regulate and establish the appropriate procedure to this end.⁵³

Caribbean Court of Justice

Finally, in its appellate jurisdiction, the Caribbean Court of Justice has made clear that trans persons should be afforded constitutional protection. In the seminal case of *Quincy McEwan et al v The Attorney General of Guyana*,⁵⁴ they clarified the constitutional position of trans person as follows:

The 1st - 4th named appellants here, by choosing to dress in clothing and accessories traditionally associated with women, are in effect expressing their identification with the female gender. And the expression of a person's gender identity forms a fundamental part of their right to dignity. Recognition of this gender identity must be given constitutional protection.⁵⁵

The international and regional human rights norms all point to gender recognition as an emerging, if not established, human rights standard. The following section will examine the legal situation of Jamaica so as to locate its laws from the ideal position of gender recognition.



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