



GENDER RECOGNITION LEGISLATION

POLICY BRIEF





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Policy Brief: Gender Recognition Legislation

Overview and Synopsis

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.

Gender recognition legislation is an important pathway for trans and gender non-conforming people in Jamaica to experience a life that is free from stigma, discrimination and violence. In 2016 there were only a few examples in the world of a legal framework for gender recognition that was enabling and supportive of the reality of trans people – Malta and Argentina being chief among them, and now, there has been a significant increase in different approaches. It is critical that TransWave Jamaica lays the necessary groundwork by engaging our community, our partners and other key stakeholders to help them understand what more needs to be done for trans and gender non-conforming Jamaicans so that this society can be one they do not have to run from.

Approaches to gender recognition have varied across the globe, with conflicting viewpoints on the importance of these various approaches. In a prime document titled *Gender Recognition Legislation: An Approach to Advocacy*, Murray (2021), established that there are three basic techniques to determining which authority is in charge of the gender recognition procedure. These are the administrative approach, the judicial approach and the health institution approach. The 'Administrative Approach' refers to when a person participates in the process through a national or subnational civil registry or another government ministry, department, or agency. An example of this occurs in Denmark

whereby the civil registration system managed by the Economy and Domestic Ministry is where a person goes to have a new social security number issued. The 'Judicial Approach' involves a person seeking a court order to have their gender changed. An example of this is in Malaysia where individuals go to the civil courts to have their ID cards and sometimes, birth certificates changed. The 'Health Institution Approach,' which is only used in a few areas, involves a health department issuing a certificate that starts the procedure. This is done in the state of California in the United States of America, where the Department of Public Health issues the certificate once an affidavit is submitted.

Similarly, there are three general approaches for the standard of proof required for trans and GNC persons when trying to have their gender markers changed. The 'Surgical Approach' exists in several countries whereby some measure of surgical intervention (including sterilization) exists as a prerequisite to having the markers changed. In Hong Kong, both proof of a gender-affirming surgery and sterilization is required for an individual to have the change registered on their identity card. The 'Biomedical Approach' is similar to the surgical approach however the prerequisite is either proof of hormone replacement therapy or other medical intervention or some psychological evaluation being done.

On the question of age, there are varying approaches to the age at which gender recognition is accessible. A parent in Luxembourg, for example, can seek to have their child's markers modified starting at the age of five. A person under the age of 21 in Sri Lanka requires parental consent and can have their marks changed at the age of 16. In terms of citizenship, some countries, such as Germany, enable permanent residents and refugees (from countries that do not have a law that permits their markers to be changed) to have access to the service. Conversely, if the goal of gender recognition legislation is to reduce the experiences of violence, discrimination, and harassment faced by trans and GNC Jamaicans, it is suggested that the legislation be viewed as one legal procedure to be used alongside a variety of ongoing actions to push for greater inclusion of trans and GNC people. It is therefore critical that we consider whether a current focus on gender recognition laws will address the real and current needs and challenges of the trans community, whatever form that model of recognition takes, or whether the community would be better served by prioritizing a comprehensive response to their experiences of homelessness, violence, discrimination, and exclusion – regardless of what their identity documents say.



Recommendations for Policymakers and Government

Taking account of the desires of local trans and GNC community, the ideal Gender Recognition Legislation for Jamaica has the following features:

1. It takes an administrative approach, using the Registrar General Department to affect changes.
2. The standard of proof is on the basis of self-determination, with the possibility of requiring community members to provide a letter or statement from medical or psychological professionals, attesting to their trans identity.
3. It avoids all the additional proof requirements that would make it prohibitive
4. It facilitates in, some measure, the ability to change gender markers two-three more times after the first change.
5. It is accessible to all citizens, permanent residents and refugees who are over 18 years of age.
6. It provides for binary and non-binary gender options.
7. It amends the Registration (Births & Deaths) Act so that – at least – the trans and GNC Jamaican will have a birth certificate that can be used to have all their other identity documents changed
8. It amends the Passport Act 1962, the Road Traffic Act 2018 and the Representation of the People Act 1944 to create process to have the gender markers on those documents adjusted to align with the identity of trans and GNC Jamaicans.
9. It harmonizes the collection of sex and gender information across all identity legislation using the NIDS framework.
10. It prohibits misgendering and discrimination on the basis of gender identity.
11. It places a duty on the government to sensitize all public sector workers around trans issues and prescribes penalties for failure to register changes of gender.
12. It establishes the positions of trans and GNC persons vis a vis other areas of law such as sexual offences, family law and prescribes how they are to be treated across spheres of life such as penal institutions, hospitals etc.



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