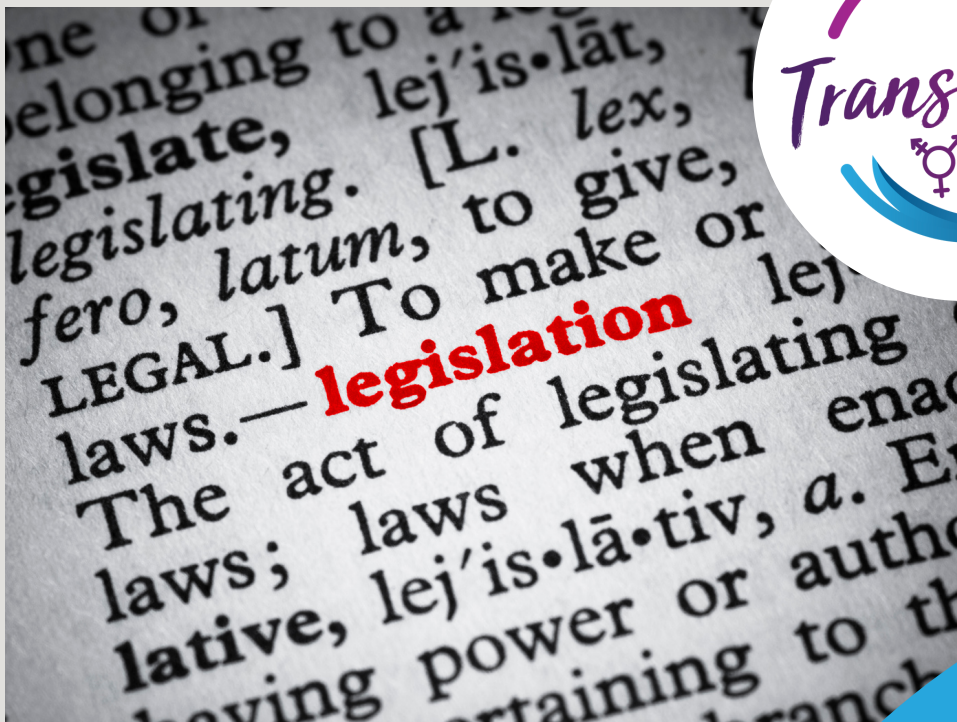


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THE CASE FOR GENDER RECOGNITION LEGISLATION IN JAMAICA.

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INTRODUCTION

Trans and gender non-conforming (GNC) people disproportionately experience of homelessness, limited access to employment opportunities, high levels of violence and barriers when accessing healthcare. These challenges are linked to the lack of legal recognition for trans people in Jamaica. Article 16 of the International Covenant on Civil and Political Rights (ICCPR) 1966 provides that “everyone shall have the right to recognition everywhere as a person before the law. Human Rights experts have interpreted this provision as meaning that States should provide for gender recognition laws. The right is further expanded in The Yogyakarta Principles plus 10, which are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity.

This issue brief will look at the obligation of States in relation to the right to recognition and what gender recognition legislation for Jamaica should look like.



THE YOGYAKARTA PRINCIPLES plus 10

Principle 31 states that “Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them.”

A.

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;

B.

Ensure access to a quick, transparent and accessible mechanism to change names, including to gender-neutral names, based on the self-determination of the perso

C.

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.



LOCAL LEGISLATION

Registration (Births and Deaths) Act 1881 governs and establishes the Registrar General Department and establishes procedures for the registration of the births and deaths of all persons born in Jamaica and the production of birth and death certificates. The form that is used to record births only collects the newborn's sex not gender. This is the same for the form used to register a death. The act does not outline procedures for changing one's name and neither does it establish any legal barrier for changing one's name to one that affirms one's gender identity.

Another law, Passport Act 1962 and its accompanying regulations require that applicants for a passport fill out a form. This form does not explicitly require the collection of sex and gender but gives them the power to do so. The regulations only have procedures for changing one's name in the passport.

The Road Traffic Act of 1938 and 2018 governs the production of driver's licenses. Applicants for a learner's permit do not require information on sex/gender. The birth certificate is provided for the license. There is no explicit requirement in the 2018 Act to have sex/gender displayed. No process is prescribed for changing any identity information on the driver's license.

Representation of the People Act 1944 governs the production of the Voter's ID. Section 10 empowers the Chief Electoral Officer to require any information necessary to have them registered to vote. The form used to apply for the ID requires that sex and not gender be collected. However, the law does not require sex/gender to be placed on the card. There is also no process for changing any identity information on the Voter's ID.

The Revenue Administration and Act 1985 and the Revenue Administration (Taxpayer Registration) Regulations 1996 govern the production of the Tax Registration Number (TRN). The form used to apply for a TRN requires sex, not gender. Section 17 (D) 7 of the Act contemplates the possibility of information required by the authority changing and requires that the person informs the body of such changes as soon as is practicable.

The National Identification and Registration Act 2021 creates a voluntary electronic ID system that allows accredited third parties to verify the identity information contained within. Identity information includes whether a person is male, or female as recorded on their birth certificate.

OPTIONS FOR GENDER RECOGNITION

Countries have taken different approaches to gender recognition. However, trans-Jamaicans have expressed what they believe would be the best for Jamaica. Some of the features that Gender Recognition Legislation should have are:

01. It takes an administrative approach, using Registrar General Department to effect changes.
02. The standard of proof is based on 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.
03. It avoids all the additional proof requirements that would make it prohibitive.
04. Amendments to Passport Act 1962, Road Traffic Act 2018 and the Representation of the People Act 1944 to create a process to have the gender markers on those documents adjusted to align with the identity of trans and GNC Jamaicans.



Are some characters described differently in the book compared to the movie? Do any characters act differently?



CONCLUSION AND RECOMMENDATIONS


There is no set standard related to the collection of sex when applying for government documents. While there is no legal obligation for the display for sex or gender on the various forms of identification this is consistent among all forms of identification except for the TRN. There is also little room for the updating of information on the cards except for the TRN and NIDS, which has a process to make changes.

With the birth certificate being the centralise document to accessing all forms of identification for Jamaican citizens, a procedure for the amending the description or to facilitate the inclusion of gender may be the greatest opportunity for recognition for trans and GNC individuals.





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