

# LEGAL GENDER RECOGNITION

## FIJI POLICY BRIEF AND CASE STUDY



- ▶ WHAT IS LEGAL GENDER RECOGNITION (LGR)?
- ▶ HOW LGR CAN HELP COMBAT DISCRIMINATION
- ▶ CASE STUDY: FIJI
- ▶ POLICY CONSIDERATIONS FOR TRANS RIGHTS ADVOCATES
- ▶ POLICY CONSIDERATIONS FOR LAWMAKERS AND OTHER GOVERNMENT STAKEHOLDERS

## WHAT IS LEGAL GENDER RECOGNITION (LGR)?

**Across Asia and the Pacific, the vast majority of trans and gender diverse people cannot get official legal and identification documents that reflect their self-defined gender identity. Instead, these documents only reflect the sex assigned at birth.**

Without accurate documents, trans people's access to critical and fundamental legal and human rights is infringed. This impacts their access to meaningfully participate in society that many people take for granted, including the right to vote, to health care, to work, to travel, the right to find a family, movement, and many others.

Legal gender recognition is the legal recognition of a transgender person's gender identity including gender marker and name, in public registries and key documents. Amending a gender marker or name can involve an administrative or legal process and the changes made are legally recognised.

Legal Gender Recognition (LGR) is crucial to improving trans and gender diverse peoples' access to justice and ensuring their dignity.



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1 Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity: Violence and discrimination based on gender identity. 73rd session, A/ HRC/73/152.para 23

# HOW LGR CAN HELP COMBAT DISCRIMINATION

**Lack of identity documents reflecting their gender leads to a vast majority of trans and gender diverse people from being excluded from the formal workforce and mainstream economy. Added to this, trans and gender diverse people are not accorded the same dignity, equality and respect as cisgender people and face high levels of gender-based violence. With few or any legal protections, they are pushed to the margins of society and experience persistent poverty, lack of housing, social exclusion and poor health outcomes.**

The small percentages of trans children who manage to complete schooling despite challenges such as bullying, find themselves unable to register in universities without documents reflecting their identities.

The Independent Expert on SOGI<sup>1</sup>, Victor Madrigal-Borloz, asserts that without legal recognition, transgender people's access to health, education, employment, housing, social security, freedom of expression, peaceful assembly and association, movement and residence are denied.

Not allowing trans and gender diverse persons to self-define their gender and change their gender markers in legal and identity documents violates fundamental tenets of international human rights law regarding protection from discrimination, self-determination, autonomy, recognition and equality before law. The discrimination and exclusion trans and gender diverse people face is exacerbated when they are required to use an identity document that does not match their gender identity or gender expression. Such situations in fact might exacerbate threats to a transgender person's safety.

There are states in Asia where changing gender marker is qualified by certain conditions such as compulsory sterilization. These conditions are not only discriminatory but further stem from an idea of pathologization of trans and gender diverse people. There is an urgent need to stop using 'gender identity disorder' as a mental health disorder, and to provide an alternative solution for accessing gender-affirming health services as well as self-determining gender identity without needing to undergo compulsory medical procedures.

# CASE STUDY: FIJI

**Fiji is currently the only Constitution in the world that covers anti-discrimination on the grounds of gender expression. Article 26 of the Republic of the Fiji Islands Constitution 2013 enshrines protection from discrimination on the grounds of sex, gender, sexual orientation, gender identity and gender expression.**

And yet, stigma, discrimination, hate crimes remain an everyday reality for trans and gender diverse people in the island nation. One of the main reasons for this, as a careful analysis<sup>2</sup> of policies and laws revealed, is the lack of legal gender recognition. Kavita Naidu, a Fijian human rights lawyer, concludes that:

Government and statutory stakeholders are not informed about LGR and its importance for equal recognition and access to public services for transgender people...[A] common misunderstanding [among government officials] was that the progressive inclusion of sexual orientation in key legislations and policies was sufficient to secure the full human rights of transgender people. State officials were not able to discern the differences between sexual orientation, gender identity and gender expression or the distinct issues faced by transgender people.

In the absence of legal gender recognition in Fiji, transgender people's ability to be accepted based on their gender identity and expression is influenced strongly by other provisions that govern particular areas of life, such as education and employment. The access to education and/or employment is further limited to those who face multiple marginalization due to other aspects of identity such as poverty, ethnicity, social class, economic status, age, and for those in rural areas or living with disability or HIV or albinism. In fact a vast majority of trans people are employed in the informal sector including sex work which is heavily criminalized.

Despite having a constitutional guarantee of anti-discrimination on the basis of gender expression, the actual day-to-day access to rights and provisions remain fairly limited for trans and gender diverse people in the absence of legal gender recognition and policy coherence.

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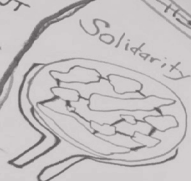
2 APTN (2022), Legal Gender Recognition in Fiji: a Legal and Policy Review in The Context of Human Rights, <https://weareaptn.org/resource/legal-gender-recognition-in-fiji-a-legal-and-policy-review-in-the-context-of-human-rights/> Accessed on 18 November 2022

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*FIJI IS CURRENTLY THE ONLY CONSTITUTION IN THE WORLD THAT COVERS ANTI-DISCRIMINATION ON THE GROUNDS OF GENDER EXPRESSION. YET, STIGMA, DISCRIMINATION, HATE CRIMES REMAIN AN EVERYDAY REALITY FOR TRANS AND GENDER DIVERSE PEOPLE IN THE ISLAND NATION. ONE OF THE MAIN REASONS FOR THIS, AS A CAREFUL ANALYSIS<sup>2</sup> OF POLICIES AND LAWS REVEALED, IS THE LACK OF LEGAL GENDER RECOGNITION.*



THE MOVEMENT  
\* FEMINIST  
\* LGBTQAI  
\* TRANS SISTERS



Trans Solidarity

FAMILY / FRIENDS

COMMUNITY / VILLAGE

LOVE

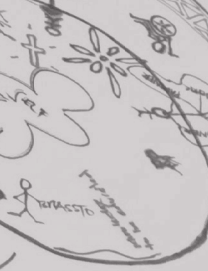
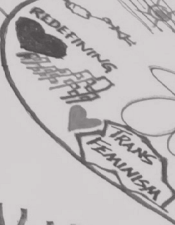


PHILANTHROPY

EXTERNAL SUPPORT

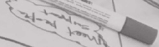
TRANS

LEGALISE  
SAME SEX  
MARRIAGE



Acceptance

PERMANENT MARKERS



# POLICY CONSIDERATIONS FOR TRANS RIGHTS ADVOCATES

- Ensure that definitions in laws and policies of terms such as ‘gender’, ‘gender identity’, ‘gender expression’, ‘transgender’ and specific transgender identities are inclusive of diverse genders, gender identities and expressions, and are based on self-determination.
- Share sound, expert data and knowledge with those making policy and communicate them in effective and powerful ways.
- Avoid conflating transgender and intersex terms and definitions in laws, regulations and policies, and promote the use of human rights-based terms such as sex characteristics to describe the relevant prohibited ground of discrimination for intersex people.
- Monitor and publicly critique the practice of ‘conversion’ or ‘reparative’ therapies (which aim to change a person’s gender identity, gender expression or sexual orientation), highlighting that such treatment is not evidence-based and is longer considered ethical.
- Document the vulnerability of transgender students to bullying and violence due to their gender identity or expression, and develop clear anti-bullying and anti-violence regulations and policies covering the actions of students or staff, focused on effective prevention, support and complaints mechanisms.



# POLICY CONSIDERATIONS FOR LAWMAKERS AND OTHER GOVERNMENT STAKEHOLDERS

- Ensure that the right to legal gender recognition is not undermined through eligibility criteria that violate human rights including, but not limited to, criteria that discriminate on any grounds including marital or family status, age, or criminal record or that require a mental health diagnosis, medical treatment, or family or community approval.
- Ensure rights-based procedures for legal gender recognition that are accessible, non-discriminatory, consistent across various documents, apply to both new and existing documents, and respect transgender people's dignity and privacy.
- Ensure that human rights standards relevant to people in detention apply in practice for all detainees without discrimination, including those who are transgender.
- Develop rights-based national policies about transgender people in detention (including in relation to placement, safety, name and gender marker on records, search processes, and access to rehabilitation and health care), that recognize transgender people's gender identity and expression, irrespective of whether they have had gender-affirming surgeries, and that provide opportunities for transgender people to participate meaningfully in decisions about their detention.
- Develop rights-based regulations and policies allowing transgender people to amend their gender marker on education records, based on self-determination and with no other eligibility requirements, and obtain new education documents with the appropriate gender marker.
- Develop equal employment opportunity laws, regulations and policies that extend fully to transgender people, including through the provision of affirmative action.
- Train duty bearers (including law enforcement officers, judges and government officials), NHRIs and civil society organizations on how anti-discrimination protections and other human rights standards apply to transgender people, and more generally on issues of sexual orientation, gender identity and expression; sexuality; and transgender rights.
- Ensure trans, gender diverse, non binary and third gender persons are meaningfully consulted with and involved in formulating new policies.

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*ENSURE THAT  
HUMAN RIGHTS  
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INCLUDING  
THOSE WHO ARE  
TRANSGENDER.*

# LEGAL GENDER RECOGNITION: POLICY BRIEF AND CASE STUDY

## FIJI POLICY BRIEF AND CASE STUDY

Read more about APTN's work on legal gender recognition in Asia and the Pacific in our full-length reports online:

### Legal Gender Recognition in Fiji: a Legal and Policy Review in The Context of Human Rights



### Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia



FOR MORE INFORMATION, PLEASE CONTACT:



**aptn**

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