

Mexico: Barriers for Trans People in Guanajuato State

Create Legal Gender Recognition Procedure; Uphold Mexican and International Law



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A plenary session of the Congress of Guanajuato on June 9, 2022 in Guanajuato City, Mexico. © 2022 Congreso del Estado Guanajuato

(León) – Trans people in the [Mexican](#) state of Guanajuato experience discrimination in work and education and onerous legal impediments due to the state’s lack of legal gender recognition, [Human Rights Watch](#) and [Amicus DH](#) said today. Guanajuato should comply with Mexican and international law and create an administrative procedure to allow trans people to accurately reflect their self-declared gender identity on official documents.

Each of Mexico’s 32 states has the authority to determine its laws and policies in civil, family, and registration matters in accordance with the constitution. So it is up to the state legislature or administration to pass a law or enact an administrative decree that enables legal gender recognition through a simple administrative procedure at a state-level civil registry. [Twenty Mexican states](#) already have such a procedure. Guanajuato does not.

“Trans people in Guanajuato are disadvantaged in work and education and weighed down with legal proceedings due to state authorities’ undue delay in recognizing the right to gender identity,” said [Cristian González Cabrera](#), LGBT rights researcher at Human Rights Watch. “Guanajuato should align its laws with national and regional jurisprudence and establish a legal gender recognition procedure, which would reduce discrimination against transgender people in work, education, and other areas of their lives.”

In October 2021, state lawmaker Dessire Ángel Rocha introduced a [legal gender recognition bill](#), but it has not been discussed in the current legislature. In the past, the state congress [has not been](#)

willing to consider bills relating to the rights of LGBT people, including previous gender recognition bills presented in [February 2019](#), [October 2019](#), and [April 2021](#).

Human Rights Watch and Amicus DH, together with the [Trans Youth Network](#) and [Colmena 41](#), interviewed 31 trans people from Guanajuato state in April 2022 in León, Irapuato, and Guanajuato city, as well as remotely, to understand and document the harms related to a lack of legal gender recognition in the state. They found human rights violations in various sectors.

In 2017, the Inter-American Court of Human Rights issued an [advisory opinion](#) in which it found that to avoid such violations states must establish simple and efficient legal gender recognition procedures based on self-identification, without invasive and pathologizing requirements. Mexico is party to both the court and the convention.

In 2019, the Mexican Supreme Court issued a landmark ruling with clear guidelines on legal gender recognition. The court said that this must be an administrative process that “meets the standards of privacy, simplicity, expeditiousness, and adequate protection of gender identity” set by the Inter-American Court.

This 2019 ruling was in part the result of cases litigated by Amicus DH – a Guanajuato-based LGBT rights organization, part of the [Identitrans](#) consortium with the Trans Youth Network and Colmena 41 – from 2016 to 2018, which resulted in federal circuit courts in Guanajuato contesting the 2017 Inter-American standards on legal gender recognition. Meanwhile, the plenary of the federal circuit courts in the state of Chihuahua ruled in opposite terms, resulting in a circuit split and compelling the Supreme Court to clarify which standard should stand as national jurisprudence.

The Supreme Court ruling binds all lower federal courts. In 2022, the court [expanded](#) the right to legal gender recognition to include children and adolescents. Under the constitution, states have a duty to harmonize their internal legislation and policies accordingly, but Guanajuato has yet to make its laws consistent with these Supreme Court rulings.

In interviews with trans people, Human Rights Watch and Amicus DH found that the absence of a legal gender recognition procedure in Guanajuato leads to serious economic, legal, health, and other ramifications for trans people. Nineteen people interviewed said that because their documents did not match their gender identity, they were discriminated against or humiliated during the recruitment process or mocked at work, if they were fortunate enough to secure a job. Six said they opted for informal or freelance work, or did not pursue certain opportunities, to avoid running the gauntlet of the formal job market without accurate identity documents.

In educational settings, 13 trans people said they had experienced humiliating situations because of a discrepancy between their documents and gender identity. Twelve people also had trouble getting academic diplomas with their correct gender marker. For some, this delayed their entry into the labor market.

Fifteen trans people also reported challenges in healthcare settings, with 11 opting for costly private care to avoid potential humiliation in the public sector, based on a mismatch between their documents and gender identity. Everyday transactions, such as routine banking, also became an obstacle course for at least six trans people, due to the challenge of proving their identity with inaccurate documents.

In the 12 Mexican states, including Guanajuato, that do not already have procedures for legal gender recognition, transgender people have to initiate an onerous injunction proceeding, a *juicio de amparo*, to enjoin the state to recognize their gender identity on the basis of the Supreme Court rulings and international law. Federal judges generally grant the injunction unless there are complications with the case, but it can be a lengthy and expensive process, which requires hiring an experienced lawyer.

In a successful *amparo* case, the judge orders the civil registry to permanently seal a trans person’s original birth certificate – meaning it is no longer readily accessible in its information systems –

and to issue a corrected certificate. This new state birth certificate is necessary to request new nationally valid identification documents like a voter's registration card, a tax number, or a passport.

Virtually everyone interviewed had experienced these proceedings as onerous and emotionally taxing, with some almost giving up due to legal complications.

"Requiring trans people from Guanajuato to litigate their identities is a waste of all parties' time, energy, and resources," said Juan Pablo Delgado, executive director of Amicus DH. "It would be a simple and human rights-based solution to create an administrative procedure for gender recognition in the state."

For detailed accounts and findings, please see below.

Employment

Eleven trans people interviewed said that they felt discriminated against when applying for a job because their legal gender in their documents did not match their physical appearance. Sometimes this led to uncomfortable questioning or humiliation from potential employers.

Eleven said that when they have been employed, superiors or fellow employees disrespected or mocked them by using their legal name or gender, rather than the ones that matched their gender identity.

Six said that they preferred to pursue informal or freelance employment, or not pursue certain opportunities at all, so that they did not have to expose themselves to potential humiliation due to a discrepancy between their gender identity and their official identification documents.

- **Alejandra R.**, a 22-year-old trans woman from León, was hired at an automotive manufacturer in early 2021. Starting with the recruitment process, she described various incidents of discrimination by supervisors, due to the discrepancy between her legal and chosen name. In October 2021, Alejandra met with the human resources director to address the discrimination. She introduced herself as "Alejandra," but the director interrupted her and said, pointing to her file, "What does it say here? We hired a man, do you understand?" After Alejandra explained that she is trans, the director replied that until she legally changed her name, she could not treat her as "Alejandra." Alejandra endured further discrimination and was fired weeks later.
- **Diego P.**, a 29-year-old trans man in León, Guanajuato, said that for the last three years he has opted for freelance work as a photographer so that employers will not ask about his gender identity when they review his identification documents. His freelance jobs have not required him to present identification with his legal name. "I decided out of fear not to have a formal job, to avoid exposing myself by having to say that I am a trans person," he said. In 2019, Diego worked at a newspaper, but when he began his gender transition, his colleagues made humiliating comments, which led him to quit.
- **Renato R.**, a 23-year-old trans man originally from Celaya, said that in 2021 he applied for a job at a taco restaurant in Celaya. After the person who received his application saw his legal name in his document, he said in front of four other applicants, "If you are a woman, dress like one." "I felt very bad for what he said, also because despite explaining my situation [of being trans], I knew that I would be denied the job," Renato said.
- **Isabel A.**, a 28-year-old trans woman originally from Irapuato, works as a development specialist for a car manufacturer. Her supervisors accepted her when she transitioned to live as a woman in 2020. However, even though nothing in Mexican law prevents the company from accommodating her preferred name in internal company communications, it has declined to change her name in her work identification, her e-mail address, and online platforms that the company uses until she seals her original Guanajuato birth certificate. Isabel has obtained a birth certificate with her new name in another state and is undertaking the lengthy process to have her original birth certificate

sealed through an injunction. In the interim, colleagues at the company constantly call her by her legal name in person and via email, despite orders from supervisors to refer to her by her chosen name. She has also received hostile comments and whistles when she visits the car workshops. Isabel believes that having official documents accurately reflecting her identity could improve the situation but does not know how long the process will take.

Education

Thirteen trans people said that teachers, professors, or classmates did not call them by their chosen name or preferred pronoun because that information was not reflected in their identification document. They experienced this as humiliating.

Twelve said that, despite asking the educational institution, they had trouble getting their academic diplomas issued under their preferred name and gender. This can – and has – caused problems with potential employers who do not understand why the gender on their academic transcripts does not match their physical appearance, thereby limiting their post-educational opportunities.

Three trans people said that they have deferred their university studies or their graduation date until their legal name and gender can be recognized in their diplomas. They have taken this step to avoid discrimination in the job market, even though it delays their entry into the labor market.

- **Rubí S.**, a 35-year-old trans woman from Guanajuato, said that her university's administration asked her to leave after two semesters because she had been unable to seal her original Guanajuato birth certificate, after having been issued a new one reflecting her gender identity in Mexico City in 2017. "To the university, it was as if I had a double identity," Rubí said. Since then, and as recently as 2021, she has tried to enroll in about 10 other universities, to no avail. Rubí, who wants to study law, explained her frustration: "If I want to get ahead in life, it is not possible. They cut your wings."
- **Óscar I.**, a 21-year-old trans man from León, was studying chemical engineering at a university in Guanajuato when he started to transition to live as a man in 2020. He asked the university what this would mean for his studies and an administrator advised him to get a lawyer. Óscar said that he felt no support from the university, which led him to withdraw from his studies until he could rectify his legal identity, which he was ultimately able to do via an injunction in 2021. He is now enrolled in another university but was not able to count the three semesters from the first university toward his studies.
- **Ana L.**, a 23-year-old trans woman from León, is studying communications in another state. She said that because her identification and university registration do not reflect her gender identity, every semester she must approach her professors and classmates to explain that she is a trans woman and ask them to call her "Ana." While most people use her chosen name, she has found it humiliating when her legal name has been read from attendance lists on various occasions. In 2022, Ana took a class with engineering students, and said she was "scared" to explain that she is a trans woman because it felt like a "hostile environment" for gender diversity.
- **André E.**, a 25-year-old trans man originally from Irapuato, completed all the coursework and other requirements necessary to graduate from the University of León with a degree in communications in 2021. However, instead of seeking employment, André decided to do an internship to prolong his studies while he awaits the outcome of his injunction case to rectify his legal documents so that his diploma does not reflect his current legal name. He says he feels "professionally delayed" due to this situation.

Birth Certificates

Human Rights Watch and Amicus DH interviewed 15 people who had received a second birth certificate in another state, most commonly in Mexico City or Jalisco. They found that getting an injunction to change a person's name on their birth certificate in Guanajuato is made more complex when a transgender person living in Guanajuato has obtained legal gender recognition in another

state. Because each state has its own civil registry system, when a trans person from Guanajuato gets legal gender recognition in another state, that state creates a new birth certificate for them. But that does not automatically permanently seal their original birth certificate in Guanajuato, meaning that until that person requests and obtains an injunction from a federal judge in Guanajuato to seal the original certificate, they possess two birth certificates.

This can create administrative barriers when requesting nationally valid identification documents, and other official documents. If the person has left Guanajuato and lives elsewhere, they have to travel back to Guanajuato, often multiple times, to participate in the legal process, which can be costly and time-consuming.

- **Ivanna T.**, a 28-year-old trans woman from Celaya, went to Mexico City in 2018 to get a corrected birth certificate, but had to undergo five years of legal proceedings in Guanajuato to get her birth certificate there sealed due to complications with her case. She described how she felt after a low point in the proceedings: “I started to cry. It was very heavy, it was exhausting. It was years of complete uncertainty. I just wanted to know if I would get my identity recognized or not. I just wanted it to be over.” Ivanna finally got her original birth certificate sealed in 2022.
- **Samantha A.**, a 22-year-old trans woman originally from Guanajuato, received a corrected birth certificate in Baja California Sur state, where she currently lives, in 2021. In January 2022 she started the process to have her Guanajuato birth certificate sealed, but as of June 2022 is still awaiting the response from a federal judge. She described the proceedings’ toll on her and her family: “Just because I live in another state, it does not mean that [Guanajuato’s] lack of legal gender recognition does not impact my life. The procedures take up a lot of time. I don’t live in Guanajuato, and I have to work, so my parents are the ones who take all the documents for me to the civil registry. This has also affected them because they constantly have to stop working to go to the registry on several occasions to see if there is already a response to my request.”
- **Andrew M.**, a 22-year-old trans man from León, received a new birth certificate from Mexico City in 2019, but was unable to get a new passport in 2020 because, due to the cumbersome legal process, he had two birth certificates. In June 2021, he filed an injunction to get his original birth certificate in Guanajuato sealed, which he was able to achieve in September 2021. While Andrew is happy that he was able to do that, he said the process was frustrating: “I see so many guys and girls who are already investing everything in their future and so am I, but in some way I am further behind, because I have had to do these things that they have not had to do [...] having these documents that recognize my identity means being able to stop investing all this energy, time, and money that I have had to invest in this and start investing it fully in my projects and my future.”

Between 2015 and 2022, Amicus DH has litigated some 50 pro bono injunction cases before the federal judiciary in Guanajuato and has provided legal advice to an even greater number of trans people seeking legal gender recognition. Each case generally costs the organization an estimated US\$450 to litigate and can currently take from 3 to 14 months to process. An estimated 45 percent of the cases are for people who have obtained a new birth certificate in another state and then need to seal their original one in Guanajuato.

The organization has limited capacity to take cases immediately. It is unclear how many people in the state litigate their cases through private attorneys, how much they pay, and how long it takes, although some have told the organization that they have spent over \$1,500.

Health Care

Fifteen trans people said that staff at public hospitals exposed their gender identity in front of other staff or patients when they called them by their legal name, rather than their chosen name. Eleven people said that they prefer to get costly private medical treatment because they experience less discrimination there.

- **Mayra P.**, a 40-year-old trans woman from Salvatierra, said that on approximately 15 separate occasions her gender identity has been exposed to other patients when her legal name is called in a clinic waiting room, which she considered humiliating. She said she prefers to go to private clinics, where she says there is less discrimination. In March 2020, Mayra had a motorcycle accident. She said that the ambulance and hospital staff who treated her refused to call her “Mayra” because it is not her legal name and mocked her. “It was very difficult,” she said. “Not only had I just had an accident, and I was scared, but I also had to defend myself from [verbal] mistreatment the entire time.”
- **Mateo B.**, a 40-year-old trans man living in León, said that he never goes to public clinics, only private clinics, because he is “afraid of being in the waiting room and being called by [his] legal name in front of other people.” He said, “I am afraid of seeing myself exposed and not knowing how everyone is going to react.”

Banking Transactions

Six trans people said that they had difficulty completing financial transactions due to inaccurate identification, such as withdrawing or depositing money at banks, opening or closing bank accounts, receiving remittances, or securing loans.

- **Keyra Q.**, a 19-year-old trans woman from Irapuato, said that around November 2021 she went to the bank to unblock her debit card. When she presented her identification document, Keyra said that the worker told her it was not hers and that the owner of the account had to be there to complete the transaction. Keyra explained that she is a trans woman but was only able to prove it was her account after offering to provide her fingerprint. She found the experience humiliating. She also said that she does not try to get credit for bigger purchases “for fear of criticism or acts of discrimination and to avoid problems.”
- **Alex M.**, a 23-year-old trans man from Guanajuato city, said that he currently does not have any bank accounts because he wants to wait for a federal judge to seal his original birth certificate so that he can have all his legal documents in order.
- **Mayra P.**, a 40-year-old trans woman from Salvatierra, said that in March 2022 she wanted to withdraw a remittance she received from family members in the United States. The person who took her identification did not believe it was her document and asked his colleague if he thought the picture resembled Mayra. While she ultimately was able to withdraw the remittance, Mayra said that she has been questioned about her identification on various occasions in this context, which she experiences as a feeling of “helplessness not knowing if this time they are going to deny me the service or not.”