

**THE EXPERIENCES OF TRANSGENDER AND INTERSEX PERSONS IN SOUTH AFRICA:
SUBMISSION TO THE UNITED NATIONS UNIVERSAL PERIODIC REVIEW (3RD CYCLE)
STATE UNDER REVIEW: SOUTH AFRICA**

Jointly Submitted by

**Legal Resources Centre (LRC),¹ Gender DynamiX (GDx),² Iranti-org,³ and
AIDS and Rights Alliance for Southern Africa (ARASA)⁴**

Jointly Prepared by:

Charlene May (LRC), Estian Smit (Gender DynamiX), Joshua Sehoole (Iranti-org),
Mandivavarira Mudarikwa (LRC) and Nthabiseng Mokoena (ARASA)



1 www.lrc.org.za

2 www.genderdynamix.org.za

3 www.iranti-org.co.za

4 www.arasa.info

I. INTRODUCTION

1. This submission is presented for consideration as part of the Universal Periodic Review (UPR) Stakeholder Report to the United Nations Human Rights Council on behalf of the Transgender and Intersex Coalition (Legal Resources Centre (LRC), Gender DynamIX (GDY), Iranti-org, and AIDS and Rights Alliance for Southern Africa (ARASA)).
2. It focuses on the plight of transgender and intersex persons in South Africa seeking to have their rights respected, protected, and fulfilled. The submission is based on first-hand information obtained by these organisations in their work with transgender and intersex persons.
3. The Coalition believes that the challenges faced by transgender and intersex persons in South Africa are not adequately addressed in the national reports of South Africa and in the UPR in general. This submission provides further information to ensure that the review of South Africa is inclusive and cognisant of the rights and challenges faced by transgender and intersex persons.

PART 1: IMPLEMENTATION OF PREVIOUS RECOMMENDATIONS

4. In response to South Africa's previous UPR reporting cycle, the Government of South Africa (GOSA) has accepted some recommendations issued. In the context of these recommendations, this submission will detail the manner in which the government has failed to address the rights of transgender and intersex persons, in these responses and in its subsequent actions.

a. **Violence against transgender persons**

Recommendation 124.81, Netherlands, Cycle 2; Recommendation 124.51, France, Cycle 2; Recommendation 124.81 (United Kingdom of Great Britain and Northern Ireland), Recommendation 124.85, Finland, Cycle 2

5. Violence against transgender and intersex persons is underpinned by societal stigma, cisnormativity,⁵ sex-binarism,⁶ transphobia and intersexphobia, and is driven by a misunderstanding of an individual's gender identity, gender expression and/or physical sex (bodily) characteristics. Gender diversity and bodily diversity (particularly intersex variations) in South Africa (SA) are still misunderstood and often confused with sexual orientation. As a result of cisnormative conceptions of gender many transgender women are still classified as "gay men" and transgender men as "lesbian women". Violence against transgender men is often unreported and unpunished, or conflated and misreported in "corrective rape" statistics which are often framed as an issue solely in the lesbian community, particularly in townships.

⁵ Cisnormativity is the assumption that each person has or should have a fixed and binary gender identity (woman/man, girl/boy) that is the same as the gender that society assigned to them at birth. This leads to marginalisation of and discrimination against transgender and other gender diverse persons whose gender identities and gender expressions differ from those assigned to them by society.

⁶ Sex-binarism is the assumption that there are or should be only two sexes, namely female and male. It invisibilises intersex bodies, and other forms of bodily diversity, such as the body alterations of transgender persons who access hormones or surgeries.

6. Violence against transgender persons is reinforced by a patriarchal culture that views masculinity as dominant and femininity as subservient. Such violence is often mischaracterised as violence motivated by prejudice against the victim's sexual orientation, rather than prejudice against their gender identity and gender expression. SA society still understands gender along cisnormative lines and follows a biological-determinist model of gender identity and gender expression. This makes it extremely hard to obtain statistical data on transgender persons.
7. By expressing greater bodily and gender diversity than allowed within socially constructed stereotypes and presentations of men and women, transgender persons are exposed to stigma, harassment, and sexual and physical violence at the hands of family members, their communities, and State actors. Transgender learners report twice as much bullying from teachers and students alike than cisgender persons; these statistics contribute to high levels of truancy, absenteeism, decreased educational aspirations and lower academic performance and ultimately lead to lower economic and social standards of living in later life. Transgender people also find it difficult to access legal protection through law enforcement, frequently experiencing secondary victimisation from police.
8. Violence against transgender persons not only deprives them of their basic human rights, but it also increases their risk of poverty, HIV infection and other health-related problems, as well as their access to rights such as legal citizenship and education. Further, many transgender persons continue to report difficulty in accessing necessary health services, particularly friendly and affirming healthcare, even in the aftermath of sexual and physical violence.
9. Intersex persons in South Africa are subjected to widespread intersexphobia, verbal and physical violence, and gross human rights violations in the medical sector. These include, but are not limited to, non-consensual, medically unnecessary, harmful treatments and surgeries, including intersex genital mutilation (IGM), being put on medical display and their bodies and genitals treated as curiosities.⁷ They face even greater obstacles of invisibility, isolation, misunderstanding, stigma, secrecy, shame and pathologisation than transgender persons.⁸ It has been reported in the SA media that in some areas there may be a practice of murdering intersex infants shortly after birth: "We interviewed 90 midwives ... 88 of them said when a child with

⁷ Bauer, M. & Truffer, D. 2016. Intersex Genital Mutilations - Human Rights Violations of Children with Variations of Sex Anatomy: NGO Report to the 2nd Periodic Report of South Africa on the Convention on the Rights of the Child (CRC), StopIGM.org/Zwischengeschlecht.org, <http://intersex.shadowreport.org/public/2016-CRC-ZA-NGO-Zwischengeschlecht-Intersex-IGM.pdf>.

Iranti-Org. 2015b. ICD intersex workshop. Video made during a regional African intersex workshop on the International Classification of Diseases (ICD), hosted by Iranti-Org, Gender Dynamix and GATE, 27 September 2015, <https://www.youtube.com/watch?v=4med0vTOzU0>.

Soldaat, N. 2006. The story of my life. In T. Shefer, F. Boonzaier & P. Kiguwa (Eds.), *The gender of psychology*. Cape Town: Juta Academic/UCT Press, 267–269.

Van Rooyen, J. 2015. Understanding social inclusion or exclusion of intersex people living in South Africa. MSc thesis, Trinity College Dublin.

⁸ Mokoena, N. 2015. Remembering Sally, and the intersex movement in South Africa. Intersex Awareness Day, <http://intersexday.org/en/remembering-sally-south-africa/>.

Husakouskaya, N. 2013. Rethinking gender and human rights through transgender and intersex experiences in South Africa. *Agenda* 27(4): 10–24.

ambiguous genitalia is born they will twist the child's neck, killing it, because it is a product of a bewitched or cursed family,' Griqua said. The mother would be told that her child was stillborn."⁹

10. In relation to violence related to gender identity, recommendations call on South Africa to put measures in place to address violence and related crimes based on sexual orientation or gender identity, develop monitoring capacity and legislation to enhance the prevention, investigation and prosecution of crimes of violence against individuals on the grounds of their sexual orientation or gender identity. In responding to these recommendations accepted by South Africa, the GOSA refers to the Policy Framework on Combating Hate Crime, Hate Speech and Unfair Discrimination¹⁰ that is currently in advanced stage of finalisation. We commend the SA government for providing a draft National Action Plan (NAP) aimed at addressing hate crimes, but wish to highlight the following shortcomings pertaining to transgender and intersex persons against violence:

10.1 The proposed NAP does not substantively address intolerance toward LGBTI persons in South Africa in general,¹¹ and fails to recognise the particular forms of violence and discrimination perpetrated against transgender, intersex, gender diverse and bodily diverse persons.

10.2 The NAP conflates biological sex and gender, and interprets gender-based discrimination and gender equality as pertaining only to women, thereby erasing the experiences of transgender, intersex, gender diverse and bodily diverse persons. While the plan acknowledges the hierarchy of hate created by existing laws' preoccupation with race, gender and disability, the NAP follows the aforementioned legislation as it creates yet another hierarchy of hate by not recognising or understanding the underlying basis for violence and discrimination on the basis of gender identity, gender expression and physical sex characteristics.

10.3 The NAP also speaks of these rights in terms of "progressive realization," a phrasing that side lines the fact that equality is an explicit constitutional right and must be protected as such as soon as breaches are identified.¹²

Recommendations

We urge the GOSA to:

11. Publicly condemn all forms of transphobic and intersexphobic violence. Further, the GOSA must ensure that such violence is ended through enacting protective legislation, regulations, policies and practices in the spheres of crime prevention, education, access to healthcare and other auxiliary services needed by victims of abuse, including the NAP, hate crime legislation and

⁹ John, Victoria. 2012. Gentle man's brutal murder turns spotlight on intolerance. *Mail & Guardian Online*, 28 June 2012, <http://mg.co.za/article/2012-06-28-gentle-mans-brutal-murder-turns-spotlight-on-intolerance>.

¹⁰ Draft for public consultation: National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, <http://www.justice.gov.za/docs/other-docs/NAP/NAP-A4-PublicConsultationBook.pdf>.

¹¹ Triangle Project submission: National Action Plan on Racism, Racial Discrimination, Xenophobia and Related Intolerance, 30 June 2016. Endorsed by Durban LGBTI Community and Health Centre, Free State Rainbow Seeds, Gay and Lesbian Network, Gender Dynamix, OUT LGBTI Wellbeing.

¹² Op cit at page 37.

associated implementation mechanisms. The government must ensure that current criminal legislation is amended to mandate tougher prison sentences for crimes motivated by hatred and prejudice towards transgender and intersex persons.

12. Enact legislation and policies that mandate sensitivity training on issues of gender diversity and body diversity (including intersex variations) and capacity-building on addressing violence against transgender and intersex persons for healthcare providers, police services, social workers and other public officials. It is crucial that those mandated to implement legislation regarding violence against transgender and intersex persons - including police, prosecutors and judges - have an in-depth understanding of such legislation and are able to implement it in a manner sensitive to gender diversity and body diversity.
13. Provide safe spaces and support mechanisms to ensure that transgender and intersex survivors of violence have access to justice. The government should ensure that transgender and intersex persons have access to the criminal justice system by ensuring prompt, thorough, impartial and serious investigations of violence, securing prosecutions and eradicating secondary victimisation. It must also ensure that criminal justice mechanisms are implemented safeguarding the right to privacy and identity where necessary.
14. Ensure collection of information, including statistical and research data, on violence against transgender and intersex persons so as to enable policy formulation and implementation. In collecting data, the police should ensure that it is disaggregated in order to track the incidence of transphobic and intersexphobic violence.
15. Ensure provision of services specific to transgender and intersex survivors of crimes, and ensure transgender-inclusive and intersex-inclusive policies are implemented in institutions which provide support services to survivors of violent crimes.
16. Provide details of protective measures that have been put in place to reduce the risk of violence against transgender and intersex persons at community level.

PART II: OTHER HUMAN RIGHTS ISSUES

17. GOSA has acknowledged a number of human rights challenges pertaining to LGBTI persons, and there remain gaps in the recognition and realisation of the rights of transgender and intersex persons. Neither the NAP, nor the government's responses to the prior UPR reporting cycle, address two critical issues facing transgender and intersex people in South Africa: **(1) Legislative and administrative obstacles and discrimination faced when attempting to alter their legal sex description; and (2) Human rights violations experienced by intersex infants, children and adolescents due to non-consensual, medically unnecessary treatments and surgeries (intersex genital mutilation).**
18. The failure to acknowledge the specific rights of transgender and intersex people, especially given multiple reports from SA human rights organisations, amounts to further marginalisation by the state.

a. Alteration of Sex Description

19. The Alteration of Sex Description and Sex Status Act 49 2003 (Act 49)¹³ was enacted to allow two categories of persons to apply to the Director-General of the National Department of Home Affairs (DHA) for an alteration of their legal sex description (gender marker) on the birth register: (1) Gender reassignment applicants: persons whose sexual characteristics have been altered resulting in gender reassignment, either by means of medical treatment, or surgical treatment, or evolvment through natural development; and (2) Intersex applicants: persons who are intersex.¹⁴ However, the manner in which DHA implements Act 49 is both exclusionary and discriminatory than law's intended purpose, and in fact unlawful, rendering many transgender and intersex persons vulnerable and effectively denying them access to their rights to citizenship, education, health, housing and employment, among others.¹⁵ The lack of just and effective implementation of Act 49 is the result of various factors, none of which the state addresses in its reports.

19.1 A lack of accurate application and understanding by DHA officials administering the Act has resulted in some offices insisting on proof of genital surgery from applicants. This constitutes a misinterpretation of section 2(2)(b) of Act 49, which requires that gender reassignment application must be accompanied by (1) the applicant's birth certificate¹⁶ and (2) two medical letters from two separate and independent health providers testifying as to the nature of the "surgical or medical treatments" administered as well as the results from either treatment.¹⁷ Home Affairs officials have often turned gender reassignment and intersex applicants away as a result of their insistence that the applications must be accompanied by proof of surgical treatment.¹⁸ However, the Act has actually designated surgical treatment as optional for gender-reassignment applicants and does not require any medical or surgical treatment for intersex persons. By making surgical treatment mandatory, DHA officials violate the right to bodily integrity and impede access to various other rights for transgender and intersex people who cannot access or do not wish to undergo surgical and/or medical body alterations.

19.2 The absence of national directives means that transgender and intersex people often wait unacceptably long periods.¹⁹ GDX, Iranti-org, LRC and partner organisations receive numerous complaints from persons who have waited, and are still waiting, for their identity documents to be altered. Waiting periods range from two to seven years. This forced waiting period is egregious given an average waiting period of three months for most other alterations to identity documents.

¹³ Alteration of Sex Description and Sex Status Act 49 of 2003

¹⁴ Act 49 (note 7), section 2(1).

¹⁵ Nadia Swanepoel reported that she had been forced into escorting because she could not get jobs after employers questioned why her identity document said she was a man. See <http://mq.co.za/article/2014-10-09-transgender-goes-on-hunger-strike-over-id-application>.

¹⁶ Section 2(2)(a)

¹⁷ Act 49 (note 7), section 2(b) – (c).

¹⁸ Gender Dynamix & Legal Resource Centre 2015. Briefing Paper: Alteration of Sex Description and Sex Status Act, No. 49 of 2003, <http://genderdynamix.org.za/wp-content/uploads/LRC-act49-2015-web.pdf>.

¹⁹ Ibid.

- 19.3 When an application is denied, DHA offices provide no reasons for the denial. This creates a problematic and undue burden on applicants seeking alternative legal redress to lodge appeal applications in terms of the Act.²⁰ The lack of explanation effectively denies transgender persons their rights to equal protection and benefit of the law. At times, applicants conduct follow-ups and are told that their applications have been “lost” without the provision of any form of adequate relief or an expedited process from DHA.²¹
- 19.4 Given the lack of DHA directives, there are currently no measures to ensure the protection of marriages where a transgender or intersex person changes their sex descriptor after getting married. SA marriages are currently governed by two separate Acts: the Marriage Act²² governing heterosexual unions, and Civil Unions Act²³ governing heterosexual and same-sex unions. However, there is no bridging regulation through which a heterosexual union which has become same-sex as a result of one partner’s change in sex descriptor can be registered under the Civil Union Act. This legislative loophole often means that transgender and intersex persons are forced (by DHA) to divorce their spouses in order to have their sex descriptors changed in their identity documents, and to access their rights. Often they are forcibly divorced without their knowledge by the Department when officials reportedly delete existing marriages. In other instances, DHA simply refuses to alter the sex descriptor without a divorce order.
- 19.5 It must be noted that the Act is still exclusionary and discriminatory and requires reform, since its requirements excludes the majority of transgender and intersex persons from applying. Most transgender and intersex persons do not have access to specialised healthcare services and to medical/mental health professionals who can provide them with the required reports. Furthermore, intersex persons are subjected to providing proof of having lived in their gender role for a period of two years, severely delaying how soon they can apply for a change in their sex descriptor.

Recommendations

We urge the GOSA to:

20. Review and immediately process any pending Act 49 applications and provide applicants with written decisions on all successful and unsuccessful applications as required by Act 49.
21. Review and amend Act 49 using a self-identification model in accordance with the Yogyakarta Principles, international human rights principles and best practices – allowing all individuals to change their legal gender on demand without imposing discriminatory and invasive requirements such as reports on medical treatments, medical surgeries or adherence to a particular gender presentation. Every individual, regardless of their gender and bodily characteristics, should have the option to self-identify as female, male or a third unspecified option (marked by a gender-

²⁰ Act 49 (note 7), section 2(3)-(4).

²¹ Ibid.

²² Marriage Act 25 of 1962.

²³ Civil Union Act 17 of 2006.

neutral X) in order to ensure that the law does not impose discriminatory prerequisites on transgender, gender diverse/gender non-conforming, intersex, body diverse and other persons who seek to alter their sex descriptors in a manner consistent with how they self-identify. The GOSA must refrain from imposing its own arbitrary and uninformed thresholds on who may “qualify” for legal gender recognition. An individual’s gender identity should not be determined by a government institution or any other outside authority, and legislative reform needs to take place to ensure that self-identification is validated and recognised.

22. Take immediate steps to circulate national internal directives, particularly to frontline officials interacting with the public, addressing Act 49 implementation. Directives must re-emphasise that Act 49 does not require evidence of surgery as prerequisite for a sex description alteration, and that evidence of hormone/medical treatment OR of social gender characteristics (i.e. the ways in which a person expresses their social identity as a member of a particular sex by using style of dressing, wearing of prostheses or other means) is sufficient in terms of Act 49 stipulations.
23. Take legislative steps to address the gap in the current marriages framework which violates the rights and dignity of transgender and intersex persons.

**b. Bodily Integrity and Freedom and Security of the Person relating to
Non-Consensual, Medically Unnecessary Treatments/Surgeries on Intersex Infants,
Children and Adolescents**

24. The reference to children here includes infants and adolescents who are defined as minors by the law. Intersex persons in South Africa are often subjected during infancy or childhood to non-consensual genital and gonadal surgeries and other treatments that are medically and physiologically unnecessary, physically and psychologically harmful (causing sterility, genital insensitivity, impaired sexual function, chronic pain, chronic bleeding, chronic infections, post-surgical depression, trauma, internal and external scarring and metabolic imbalances), and which constitute gross human rights violations.²⁴ This takes the form of so-called ‘normalising’ feminising or ‘normalising’ masculinising treatments that aim to make all human bodies conform to stereotypical sex standards based on highly problematic, discriminatory notions of sex binarism, namely, the assumption that there are only two ‘normal’, legitimate sexes (female and male) and that each of these has a typical appearance to which members of that sex must conform in order to be healthy and happy human beings. Intersex genital mutilation (IGM) is similar to female genital mutilation in constituting treatments or interventions that are gross human rights violations.

²⁴ Bauer, M. & Truffer, D. 2016. Intersex Genital Mutilations - Human Rights Violations of Children with Variations of Sex Anatomy: NGO Report to the 2nd Periodic Report of South Africa on the Convention on the Rights of the Child (CRC), StopIGM.org/Zwischengeschlecht.org, <http://intersex.shadowreport.org/public/2016-CRC-ZA-NGO-Zwischengeschlecht-Intersex-IGM.pdf>.

Legal Resources Centre, Gender DynamiX, Iranti-org & AIDS and Rights Alliance for Southern Africa. 2016. The experiences of transgender and intersex children in South Africa: Additional input to the Committee on the Rights of the Child in advance of the 73rd Session of the Committee, 15 August 2016.

Carpenter, M. & Cabral, M. (Eds.). 2015. Intersex Issues in the International Classification of Diseases – a revision, <https://globaltransaction.files.wordpress.com/2015/10/intersex-issues-in-the-icd.pdf>.

25. As pointed out by international intersex activists and experts (including SA intersex activist, Nthabiseng Mokoena): “‘Normalizing’ procedures violate the right to physical and mental integrity, the right to freedom from torture and medical abuses, the right to not being subjected to experimentation, the right to take informed choices and give informed consent, the right to privacy and, in general, sexual and reproductive rights.”²⁵ Consent given without positive, affirming language and information cannot be characterised as full, free and informed consent. Training and education on informed consent, bodily diversity and the right to bodily integrity and autonomy, are therefore necessary to ensure that healthcare professionals are able to provide medical information and healthcare services that are balanced, accurate, evidence based and informed by human rights approaches when interacting with intersex infants, youth and their parents and/or guardians.

Continued Pathologisation of Transgender, Gender Diverse and Intersex Children

26. Human rights violations against intersex persons in medical settings continue because the diagnostic nomenclature and language used in medical and public discourses to name, classify, describe and understand intersex bodies are stigmatising and pathologising, e.g. the World Health Organisation’s International Classification of Diseases and Related Health Problems (ICD)²⁶ and SA medical publications. The way in which different forms of bodily diversity relating to sex characteristics are framed in the ICD as “disorders”, “diseases”, “dysfunctions”, “abnormalities”, “anomalies”, “syndromes”, “deformations”, “malformations” and so on, points medical health practitioners toward medical intervention even where there is no medical need, and there is a clear link between pathologising clinical language and human rights abuses in medical settings.
27. Trans and gender diverse children continue to be pathologised through the practice of diagnosing them with “F64.2 Gender Identity Disorder of Childhood” as currently defined in the ICD-10. As part of the ICD-10 revision process, five countries, including South Africa (the only African country), were identified as field testing sites for the new ICD-11 diagnostic categories of Gender Incongruence of Childhood (GIC) and Gender Incongruence of Adolescence and Adulthood (GIAA), which were proposed as replacements for the ICD-10 categories. Field trials were to be conducted under the auspices of the World Health Organisation (WHO). Recruitment and supervision of the SA Field Testing Coordinator was vested with the University of Cape Town (UCT) Department of Psychiatry.
28. The Coordinator initially consulted with local transgender experts and advocates to become familiar with aspects relevant to local transgender persons and their experiences. A 3-day protocol development meeting was then held in August 2013, which included drafting of research protocols by an advisory panel and other clinicians and advocates. Further inputs and endorsement were then acquired from affected parties, including academics and clinicians from the legal and health fields, as well as from civil society and representation of the affected community. To address delegates’ concern that exclusion of non-clinicians would result in insufficient capturing of data, especially regarding the childhood diagnosis, assurance was given

²⁵ Carpenter & Cabral, 2015.

²⁶ www.who.int/whosis/icd10/

that if local clinicians produced a scientifically useful GIC questionnaire for clinicians, non-clinicians and other affected groups, WHO would consider distributing this questionnaire with its other internet-based studies. The Child Psychiatrist and the head of the UCT Child Psychiatry Department then produced a scientifically valid and useful proposal for studying the views of the GIC diagnosis amongst clinicians and non-clinicians. Despite repeated attempts, they have to date not received feedback from WHO on their proposal, and have been informed that no GIC study will be done locally.

29. Local clinicians were afforded no opportunity to contribute to the field trial protocols and questionnaires, especially around the childhood diagnostic category, with local testing of GIC not seeming a priority to WHO. The impression has been left that a substantial part of WHO's engagement with affected parties in this region was nominal only and that non-clinicians and affected communities in particular are not relevant in this process. The continued marginalisation of trans and gender diverse children in field trials has led to a letter of concern around the SA ICD-11 field testing process of GIC.²⁷
30. Criticism of GIC has come from groups all over the world, including at the Trans Health, Advocacy and Research Conference co-hosted by Gender Dynamix, S.H.E and TIA in Cape Town, South Africa, in 2014. Participants examined the ICD reform process and ICD-11 proposals, and formally requested WHO to discard the current Gender Identity Disorder of Childhood diagnosis and refrain from replacing it with any new pathologising diagnosis, including GIC.²⁸

Recommendations

We urge the GOSA to:

31. Promote the understanding that intersex bodies are healthy manifestations of human bodily diversity and that such diversity must be promoted as it is in line with the tenets of the Constitution of South Africa.
32. Mandate training and education on informed consent, bodily diversity and the right to bodily integrity for all healthcare professionals in order to ensure that the medical information and healthcare services they provide to intersex persons are balanced, accurate, evidence based and informed by human rights approaches. We urge the GOSA to require psychological and other professionals to insist that parents "look for alternatives to surgical intervention in the case of intersex infants, unless for pertinent physical health reasons".

²⁷ The letter of concern to WHO regarding the South African field testing process is available for download at <http://www.iranti-org.co.za/content/Projects/ICD/SA%20ICD-11%20field%20testing%20letter%20of%20concern.docx>.

See also an open letter, titled "The 'Gender Incongruence of Childhood' diagnosis revisited: A statement from clinicians and researchers" (May 2016) at <http://tgeu.org/the-gender-incongruence-of-childhood-diagnosis-revisited-a-statement-from-clinicians-and-researchers/>

²⁸ Cape Town declaration: Gender incongruence in childhood, 28 July 2014. Declaration requesting removal of WHO ICD diagnoses that pathologise gender diversity among children and youth; issued by working group (40 delegates, 11 countries) who met on 2 June 2014 at 2nd Trans* Health, Research and Advocacy Conference, Cape Town. Available at <http://genderdynamix.org.za/%E2%80%8Bcape-town-declaration/> and on the World Professional Association for Transgender Health (WPATH) website: http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1635&pk_association_webpage=5192.

33. Financially support and preserve intersex advocacy and awareness organisations to ensure that doctors and the public are aware of intersex children's right to self-determination and the physical and mental harms of medically unnecessary treatments and surgeries.
34. Conduct an investigation into the prevalence of non-consensual, medically unnecessary surgeries on intersex infants, children and adolescents in the SA public and private health sectors; ensure that such human rights violations are ceased and gender-related surgeries and hormonal treatments take place only where desired by the individual in question and under conditions of full, free and informed consent; and provide mechanisms and compensation where individuals have been subjected to forced, coercive or involuntary procedures as infants or children.
35. Investigate and enact health legislative and policy measures which prohibit non-consensual, medically unnecessary treatments and surgeries on intersex children (intersex genital mutilation), and which take into consideration the best interests of the child in cases where medical treatment or surgery on intersex infants and adolescents may be contemplated for the preservation of physical health or life.
36. Adopt country-specific ICD adaptations in line with human rights standards, such as undertaken by Denmark, and depathologise trans and gender diverse children by removing diagnoses related to gender diversity in childhood, including Gender Identity Disorder of Childhood in the ICD-10, currently in use in SA.

c. Unequal Access to Health

37. Apart from facing the same socio-economic and socio-political barriers to quality healthcare faced by South Africans generally, intersex and transgender persons also have to navigate a healthcare system that is discriminatory and unresponsive to their general and specific healthcare needs, and that lacks an understanding of the right to bodily integrity and informed consent models. Transgender persons face a lack of access to gender affirming healthcare (including psychosocial support, and hormones and surgical and other procedures for bodily alterations). Intersex persons face gross human rights violations in the medical sector, including intersex genital mutilation (as outlined above), and a lack of access to psychosocial support and informed, affirming, human rights-based approaches to intersex healthcare.
38. In the government-subsidised public sector, there is a dearth of gender affirming healthcare services for transgender people. Currently, only one hospital provides comprehensive gender affirming care and follows the latest guidelines of the World Professional Association for Transgender Health (WPATH) and actively works together with transgender organisations. In a few provinces, transgender organisations are actively engaged in training nurses and healthcare providers at clinics and hospitals, since government neglects to take responsibility for this. Moreover, the country's response to HIV/Aids and psychosocial services are yet to turn their focus on the transgender and intersex communities, even though the transgender community is cited as a key population.
39. There remains a lack of national policy guidelines and standards of care for gender affirming care which could assist health professionals in providing services and transgender people in navigating the healthcare system. Medical training institutions are also largely unable to train medical

- officers with the clinical skills to provide gender affirming healthcare. Additionally, health professionals and officials barricade access to healthcare by overt discrimination and antagonism.
40. In the private healthcare sector, the few trans people who have the means to access private care, face exorbitant prices, poorly regulated insurance and service provider industries, as well as classification of trans-specific healthcare as cosmetic and outside of the scope of medical aid funding.
 41. The Constitution²⁹ enjoins the state to ensure progressive realisation of everyone's right to healthcare services. The National Health Act supplements this constitutional directive by issuing best practice rules for providing the best possible healthcare services to citizens. It protects the rights of vulnerable groups, including women, children, older persons and persons with disabilities, but does not include transgender and intersex people. The Department of Health has initiated strategies to improve the health status of South Africans, for instance the National Health Insurance (NHI). Its main objectives are to improve service and promote equity and efficiency in healthcare. Although equity is discussed in detail, transgender and intersex people seem to have been overlooked.
 42. Transgender and intersex people are further alienated as the system operates under the binary assumption that everyone has a typically male or female body, and has a gender identity and gender expression that conform to cisnormative societal expectations. This leaves gender diverse and body diverse persons completely erased and denied access to quality appropriate healthcare.

Recommendations

We urge the GOSA to:

43. Put in place policy directives for healthcare practitioners to aid in ensuring non-violent, non-stigmatising and non-discriminatory treatment of transgender and intersex persons.
44. Ensure that health professionals acquire the requisite skills through training and curricula that are inclusive and affirming of transgender and intersex healthcare needs.
45. Provide healthcare services that are trans and intersex inclusive, affirming and informed by human rights approaches, at all levels of healthcare provision.
46. Ensure that policy and legal reform that seeks to respect, protect and fulfil the rights of transgender and intersex persons to equal access to health, are led by transgender and intersex individuals with the assistance of the civil society organisations which work with them.

d. Educational Environments and School Discipline

47. The SA school curriculum does not mention gender, sexual, or bodily diversity. Gender identity, gender expression, intersex variations and sexual orientation are rarely discussed in a manner which ensures inclusivity and a balanced, informed understanding in schools. This has serious consequences for transgender and intersex individuals who are not educated about gender and body diversity in their school curriculum. Transgender and intersex youth may feel pressured into

²⁹ Section 27

conforming to gender and sex binaries and stereotypes, and intersex youth into undergoing invasive and medically unnecessary procedures. This has a detrimental effect on the mental and sexual health of transgender and intersex youth as they go through puberty and may result in depression, self-harming and other life-risking behaviour.

48. Lack of education on gender identity and gender expression causes many transgender youth to initially interpret their gender identities in terms of sexual orientation categories (e.g. gay or lesbian) because they have never been exposed to the notion of transgender identities. Other transgender people identify as gay or lesbian because the community more easily understands these terms than “transgender”. Exposure to gender diversity education is crucial to a transgender individual’s understanding of their gender identity, healthy mental and sexual development, and navigation of puberty and appropriate options available to them at that time.
49. Intersex persons whose bodies (sex characteristics) do not appear stereotypically female or male are also generally only exposed to sexual orientation terminology or to stigmatising terms that conflate incorrect assumptions about biology and sexual orientation. Additionally, they may be exposed in medical settings to highly technical and pathologising medical language (e.g. “disorder”, “disease”, “malformation”, “pathologic”, “defect” and “abnormality”) about their bodies. This undermines a positive sense of self and causes depression, anxiety and confusion about one’s body, identity and belonging.
50. The lack of education around gender, bodily and sexual diversity creates a hostile, discriminatory environment for transgender, intersex and gender diverse/gender non-conforming youth in schools,³⁰ including bullying and ostracism. Some protection generally comes from individual teachers and staff members, but there are no systems and structures in place to ensure consistent and sustainable interventions of teachers on behalf of transgender and intersex youth.
51. Transgender and intersex learners often choose not to use toilets and shower facilities at school for fear of harassment and discrimination by other learners and educators. It has for instance been reported that “a principal at a school in Ga-Ntatelang village near Kuruman undressed a six-year-old child, who had ambiguous genitalia but preferred to use the girls’ toilets, and forced the child to use the boys’ toilets instead”.³¹ Learners often contain urinating, defecating and changing menstrual items until they are at home in order to avoid discrimination, sexual assault and harassment. Although individual teachers have allowed transgender youth access to staff toilets, this often only further isolates them from other learners at school and enables discrimination to continue.
52. Due to prejudice and limited understanding of gender identity, gender expression and body diversity, both learners and teachers have been reported as refusing to refer to transgender and intersex persons using the right pronouns. This has a detrimental effect on the ability of

³⁰ Submissions here largely draw from the following research report: Sanger, N. 2014. *Young and transgender: Understanding the experiences of young transgender persons in educational institutions and the health sector in South Africa*. Cape Town: Gender Dynamix, <http://genderdynamix.org.za/wp-content/uploads/GDXtransyouth2015-web.pdf>.

³¹ John, Victoria. 2012. Gentle man's brutal murder turns spotlight on intolerance. *Mail & Guardian Online*, 28 June 2012, <http://mg.co.za/article/2012-06-28-gentle-mans-brutal-murder-turns-spotlight-on-intolerance>.

transgender and intersex children to learn and to socially relate with their peers and can instigate and sustain bullying.

53. Sex segregation through school uniforms according to a gender binary that is enforced for boys and girls rob transgender and gender diverse/gender non-conforming students of their equality and dignity. Dress and pronouns are important ways in which persons express their gender identity. Forcing incorrect pronouns and inappropriate sex-specific uniforms on pupils in educational environment is harmful to their dignity, sense of self and educational experience. The discomfort experienced by these pupils is exacerbated by their being targets of bullying and intimidation on school grounds, which various school policies do not take into account or adequately address.
54. The matriculation certificate for the final high school qualification requires the applicants' identification number, and personal details such as forenames, to be captured. If a person changes their legal gender, this gendered information on the certificate makes it impossible for them to use the certificate, especially when they have also altered their forenames (and surname) and identification number on the identification card. This leads to transgender and intersex persons being unable to rely on their qualification in seeking employment and financial opportunities. The current policy for alterations is understood by the responsible unit, Umalusi, to mean that certificates are only re-issued where administrative errors occur and not for reasons of legal gender recognition in the case of transgender and intersex persons. They believe transgender and intersex persons bear the responsibility for proving that their certificate is not fraudulent. This violates their rights to privacy and equality by requiring them to divulge private details about their gender identity and bodily characteristics when seeking jobs and other opportunities.
55. Currently, there are no policies or guidelines for schools to assist learners, teachers, school-governing bodies and school communities on how to ensure social inclusion for transgender and intersex children. The inclusion and realisation of their rights are currently dependent upon the willingness of the school community in question.

Recommendations

We urge the GOSA to:

56. Require school-governing bodies and other stakeholders (teachers, unions, education bodies) to conceptualise and implement structures within schools to address and prevent discrimination against transgender and intersex youth. We further urge the GOSA to require schools to engage in a dialogue on how to effectively educate learners on gender, sexual and bodily diversity within the curriculum. The GOSA must take steps towards ensuring that gender identities, gender expression and bodily diversity are discussed more openly in the school environment.
57. Develop protective school and education policies that safeguard a smooth social transition for gender diverse/gender non-conforming pupils to choose their school attire/uniforms to protect their dignity at school. We urge the GOSA to establish governing and decision-making bodies in the Education sector for addressing concerns related to transgender, intersex, body diverse and gender diverse/gender non-conforming youth.

58. Ensure that transgender and intersex persons seeking to alter their details on the matriculation certificate can do so without delay and discrimination.
 59. Draft and implement national and provincial policies regarding the inclusion and protective measures (among others) of transgender and intersex children at all school levels.
 60. Mandate the implementation of community education programmes about gender identity, gender expression, bodily diversity, intersex variations and sexual orientation. The greater community must have access to awareness regarding transgender and intersex youth and their needs. Trans and intersex youth must also have safe spaces to turn to for support.
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