

PRESS RELEASE

South African Government Silent on Transgender and Intersex Rights

Banjul

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Today, the South African (SA) government presented its [state report](#)¹ to the African Commission on Human and People's Rights (ACHPR) during the latter's 58th Ordinary Session in Banjul, the Gambia, 6-20 April 2016. We noted with concern that the SA state report neglected to address widespread human rights challenges faced by transgender and intersex persons in South Africa. It merely contains a brief section on "Sexual orientation and gender identity", but the focus is on sexual orientation, same-sex marriage and homophobia, and refers primarily to gays and lesbians.

An understanding of human rights concepts of gender identity, gender expression and bodily autonomy/integrity in relation to transgender and intersex persons are completely absent from the SA state report. Nor does the state report show any awareness of shortcomings in South African legislation, policies, practices and services affecting transgender and intersex persons.

A transgender and intersex shadow report was therefore submitted to the ACHPR by [Irant-Org](#), [Gender Dynamix](#) and [Legal Resources Centre](#). The shadow report points out that the SA government needs to distinguish between human rights related to (1) gender identity and gender expression, and (2) body diversity, particularly intersex variations and other non-binary bodies, and that the state needs to offer greater recognition and protection of these rights. Awareness is needed of how cisnormativity, transphobia, intersexphobia and binary conceptions of sex and gender are still entrenched in South African society and its institutions, thereby acting to oppress, marginalise and invisibilise groups and individuals who embody forms of gender and body diversity.

In South Africa, discrimination on the basis of gender identity, gender expression and body diversity intersect with race, class, geographic location, disability, language, culture, sexual orientation and other positionalities, causing transgender, intersex and other gender and body diverse persons to be among the most marginalised groups in the country. They face greater risks of poverty, homelessness, physical and sexual violence, verbal abuse, rejection by families and communities, HIV infection and other health-related problems, as well as greater lack of access to rights related to education, employment, healthcare services, legal gender recognition and citizenship and of secondary victimization by state actors.

¹ The report is titled the *Combined Second Periodic Report under the African Charter on Human and People's Rights and Initial Report under the Protocol to the African Charter on the Rights of Women in Africa*, August 2015, Republic of South Africa.



1 Iranti-Org (Joshua Sehoole) and Gender Dynamix (Estian Smit) present the South African Transgender and Intersex Shadow Report to the Chairperson of the African Commission of Human and People's Rights, Adv. Pansy Tlakula

The transgender and intersex shadow report calls upon the South African government to:

- Publicly condemn all forms of transphobic and intersexphobic violence and discrimination, and enact protective legislation, regulations, policies and implementation mechanisms that address hate crimes against transgender and intersex persons, and include these groups within policies, laws and action plans that seek to address gender inequality and violence, as well as provide other auxiliary services needed by victims of abuse.
- Mandate sensitivity training on issues of gender diversity and body diversity (including intersex variations and other non-binary bodies) and capacity-building on violence against transgender and intersex persons for healthcare providers, police services, prosecutors, judges, social workers and other public officials who interact with transgender and intersex persons, as well as the necessity of adopting the position of full decriminalisation of sex work as recommended by the Commission for Gender Equality and the World Health Organisation in order to ensure the safety and security of transgender and other sex workers in the industry.
- Take steps towards ensuring that gender identities, gender expression and bodily diversity are discussed more openly in the school environment and to mandate the implementation of community education programmes about gender identity and expression, bodily diversity (particularly intersex variations and other non-binary bodies) and sexual orientation; provide the greater community with access to educational resources regarding transgender and intersex youth and their needs; and enact protective school and education policies that safeguard a smooth social transition for transgender, gender diverse/non-conforming and intersex pupils need to be developed. All learners should be able to choose a school uniform in line with their gender expression and to have their dignity on school grounds protected.

- 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. The state needs to mandate training and education on informed consent, bodily diversity and the right to bodily integrity and autonomy 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. The state must require psychological professionals to encourage parents to “look for alternatives to surgical intervention in the case of intersex infants, unless for pertinent physical health reasons”² and to prohibit medically unnecessary surgeries on intersex children. The state must urgently conduct an investigation into the prevalence of non-consensual, medically unnecessary surgeries on intersex infants, children and adolescents in the South African public and private health sectors,³ and take steps to ensure that such human rights violations are ceased,⁴ and that 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,⁵ and that redress mechanisms and reparations are provided where individuals have been subjected to forced, coercive or involuntary procedures as infants or children.⁶
- Review and immediately processes any pending Act 49 applications and provides the applicants with written decisions on all successful and unsuccessful applications as is required by Act 49. As a signatory to the Yogyakarta Principles, South Africa needs to provide for legal recognition using a self-identification model, allowing all individuals to change their legal gender on demand without imposing discriminatory requirements such as reports on medical treatments, medical surgeries or living in a particular gender role. 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 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 state must refrain from imposing what is considered as a threshold on how to “qualify” as a transgender person, an intersex person, a woman, or a man. An individual’s gender identity should not be determined by a government institution, or anyone other than oneself and legislative reform needs to take place to ensure self-identification.

²The Psychological Society of South Africa (PsySSA) (2013), *Sexual and Gender Diversity Statement*. Available at <http://www.psyssa.com/psyssa-position-statement-sexual-gender/>. Page 10.

³ World Health Organization (WHO). (2014). *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement*, OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO. Geneva, Switzerland: WHO, p.16.

⁴ Méndez, Juan E. (2013). *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Juan E. Méndez. Human Rights Council, 22nd Session, 1 February 2013. United Nations General Assembly, Document A/HRC/22/53, p. 23.

⁵ WHO, 2014, pp. 7-8, 14-15.

⁶ WHO, 2014, pp.15-16.

- Take immediate steps to develop and circulate national internal directives, particularly to frontline officials interacting with the public, addressing the implementation of Act 49 and how such applications can be processed in an effective and time-efficient manner. Significantly, the directives need to re-emphasise that Act 49 does *not* require evidence of surgery as a 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, the wearing of prostheses or other means) is sufficient in terms of the stipulations of Act 49. Department of Home Affairs staff members must be provided with ongoing training in order to ensure that they are up to date on the State's obligations in Act 49, and regarding transgender and intersex rights generally, through partnership with various local CSOs working on these issues.

We remain committed to working towards the full realization of rights relating to gender identity, expression and bodily autonomy. We urge the state to ensure that all policy and legal reform that seeks to respect, protect and realise the rights of transgender and intersex persons to equal access to health, legal recognition and non-discrimination in all fields are underpinned by a human rights approach and is led by transgender and intersex individuals themselves with the assistance of the civil society organisations which work with them.

- [Irant-Org](#), [Gender Dynamix](#), [Legal Resources Centre](#) and [ARASA](#)

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