**AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS**

# REPORT ON THE CIVIL, POLITICAL AND SOCIO-ECONOMIC RIGHTS OF TRANSGENDER AND INTERSEX PERSONS IN SOUTH AFRICA UNDER THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS IN RESPONSE TO THE SECOND COMBINED PERIODIC REPORT OF THE GOVERNMENT OF SOUTH AFRICA AND THE INITIAL REPORT UNDER THE PROTOCOL TO THE AFRICAN CHARTER ON THE RIGHTS OF WOMEN IN AFRICA

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## EXECUTIVE SUMMARY

We hereby submit additional input to the African Commission of Human and People's Rights in advance of the 58th Session of the Commission to be held in April 2016 and in response to the invitations to civil society organisations to provide additional information during the preparation of the 58th session. We welcome this opportunity to contribute to the Commission's evaluation of South Africa. The submissions contained within this report focus exclusively on the plight of transgender and intersex persons in South Africa seeking to have their rights respected, protected and fulfilled. We believe that the challenges faced by transgender and intersex persons in South Africa are currently not dealt with sufficiently in the state report. This submission therefore aims to provide further information in order to ensure that the dialogue between the Committee and the government of South Africa (GOSA) is inclusive and cognisant of the rights and challenges of transgender and intersex persons.

We have in recent months made similar submissions to the United Nations Human Rights Committee when it dealt with the South African report on the implementation of the International Covenant on Civil and Political Rights. We welcome the opportunity to make submissions in respect of implementation of the African Charter on Human and Peoples' Rights, and would have hoped that the South African government would have engaged with civil society organisations in the country prior to submitting the Report. The Report dated August 2015 was only brought to the attention of Civil Society Organisations in February 2016, which has not allowed for sufficient engagement with the Report and has delayed submission of this report.

## I. SOUTH AFRICA'S INTERNATIONAL, REGIONAL AND DOMESTIC COMMITMENTS TO HUMAN RIGHTS

South Africa signed and ratified the African Charter on Human and Peoples' Rights on 9 July 1996. South Africa has also signed and ratified the Protocol to the Charter on Human and Peoples' Rights on the Rights of Women in Africa (herein after referred to as the Protocol) on 16 March 2004.

In addition, South Africa has signed and ratified the International Covenant on Civil and Political Rights. Relevant to our submissions is also South Africa's commitment to the Convention on the Elimination of Discrimination Against Women.

The South African Constitution and in particular its Bill of Rights finds application with specific reference to Section 9 of the Constitution, which contains the equality clause and specifically recognizes the right to be free from discrimination based on sex, sexual orientation and gender identity.

## II. THE SOUTH AFRICAN GOVERNMENT'S FAILURES TO RESPECT, PROTECT AND PROMOTE THE RIGHTS OF TRANSGENDER AND INTERSEX PERSONS IN SOUTH AFRICA – THE CHARTER

### A. Prohibition of discrimination[1], right to equality[2] and the right to life and personal integrity[3]

Violence and discrimination against transgender and intersex persons are underpinned by societal stigma, transphobia, intersexphobia and overshadowed by misunderstandings about their presumed sexual orientation. In South Africa, there is still a failure to adequately distinguish, recognise and protect human rights related to (1) gender identity and gender expression, and (2) body diversity, particularly intersex variations and other nonbinary bodies.

Firstly, diverse gender identities and gender expressions remain marginalised, invisibilised and oppressed in South Africa due to the continued dominance of cisnormative and heteronormative

[1] Article 2

[2] Article3

[3] Article 4

conceptions of gender. This results, among others, in the erroneous classification of many transgender women 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”[4] statistics which are often framed as an issue solely in the lesbian community, particularly in townships. Violence against transgender persons is reinforced by a culture that views masculinity as dominant and femininity as subservient. Such violence is still misunderstood and often characterised as violence motivated by the victim’s sexual orientation rather than their gender identity and gender expression. South African 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 in South Africa.

By expressing greater bodily and gender diversity than socially constructed stereotypes and constructions 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 persons have expressed experiencing twice as much bullying from teachers and students alike, which contributes to high levels of truancy, absenteeism, decreased educational aspirations and lower academic performance, ultimately leading to lower economic and social standards of living in later life for transgender persons. Transgender people also find it difficult to access legal protection through law enforcement. One transgender woman reported:

> *‘I was raped and I went to the police station. They would not take my case and I could not access rape services as a result of them not wanting to take my case. The police thought I was male’.*

Not only does this deprive transgender people of their basic human rights, but it increases their risk of poverty, HIV infection and other health-related problems, as well as access to rights such as legal citizenship and education. Further to this, many transgender persons continue to

[4] Although we use the term in the report, we wish to point out that crimes perpetrated against persons based solely on their perceived or real sexual orientation and or gender identity are crimes committed based on hate against persons who do not conform to gender stereotypes within our society. These crimes are not always sexual offences, but range from assault to murder.

express difficulty in accessing the necessary health services, including (a) friendly and affirming general health care, and (b) transgender-specific transition/gender affirming health care. Even in times of experiencing sexual and physical violence, transgender people often experience denial of health care and secondary victimisation.

Secondly, body diversity (particularly intersex variations and other nonbinary bodies) remain marginalised, invisibilised and oppressed due to the continued legal, medical and social imposition of normative binary conceptions of sex that are narrowly restricted to stereotypical depictions of femaleness and maleness. This makes body diverse persons the target of pervasive violence, discrimination and misunderstanding in South African health care settings and society at large. Intersex persons, in particular, are subjected to widespread intersexphobia, verbal and physical violence, and subjected to gross human rights violations in the medical sector, including non-consensual, medically unnecessary treatments and surgeries, harmful and stigmatising clinical language, being put on medical display and their bodies and genitals treated as a curiosity.[5] They face even greater obstacles of invisibility, isolation, misunderstanding, stigma, secrecy, shame and pathologisation than transgender persons.[6] It has been reported in the South African 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 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."*[7].

[5] 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. Accessed 23 October at https://www.youtube.com/watch?v=4med0vTOzU0. See also 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. See also Van Rooyen, J. 2015. Understanding social inclusion or exclusion of intersex people living in South Africa. MSc thesis, Trinity College Dublin.

[6] Mokoena, N. 2015. Remembering Sally, and the intersex movement in South Africa. Intersex Awareness Day. Accessed 28 October 2015 at http://intersexday.org/en/remembering-sally-south-africa/. See also Husakouskaya, N. 2013. Rethinking gender and human rights through transgender and intersex experiences in South Africa. *Agenda* 27(4): 10−24.

[7] 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

### Suggested questions for the delegation from the Government of South Africa:

- What protective measures have been put in place to reduce the risk of violence against transgender and intersex persons at the community level?

### Suggested recommendations for the Government of South Africa:

As noted by one author, "*confronting the issue of GBV against transgender communities will not only promote the rights and safety of transgender people but will also advance broader goals of gender equality and elimination of all forms of gender-based violence. Reducing the stigma and taboos surrounding transgender persons and issues is a critical step to ensuring human rights and combating gender-based violence in general.*"[8] Similarly, confronting human rights violations against intersex persons, and eradicating the stigma, ignorance and secrecy surrounding different forms of bodily diversity are critical to building a society that respects and protects all people's bodily integrity and bodily autonomy. Some key actions that can be implemented include the following:

- The GOSA must publicly condemn all forms of transphobic and intersexphobic violence and take steps to ensure that such violence is addressed through enacting protective legislation, regulations and policies in the spheres of crime prevention, sexual offences, education, access to healthcare, bodily integrity/autonomy and informed consent in medical settings, reparation mechanisms for intersex and transgender persons subjected to human rights violations, particularly non-consensual "normalising" medical treatments/surgeries and "reparative/conversion" psychological/psychiatric treatments in health care institutions, and other auxiliary services needed by victims of abuse, including hate crime legislation and associated implementation mechanisms. Further, the GOSA must include transgender and intersex persons within policies, laws and action plans which seek to address gender inequality and violence. The government must ensure that current criminal legislation is amended to ensure the inclusion of tougher sentences for crimes motivated by

[8]Kate Giles, 'Gender-Based Violence Against the Transgender Community Is Underreported' available at http://www.prb.org/Publications/Articles/2011/gender-based-violence-transgender.aspx

transphobia, intersexphobia and prejudice towards transgender and intersex persons.

- GOSA should enact legislation and policies that mandate sensitivity training on issues of gender diversity and body diversity (including intersex variations and other nonbinary bodies) and capacity-building on violence against transgender and intersex persons for healthcare providers, police services, social workers and other public officials who interact with transgender and intersex persons. 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.
- GOSA must make safe spaces such as transgender-friendly and intersex-friendly homeless shelters and support mechanisms available to ensure that transgender and intersex victims of violence are encouraged to report violence. The government should therefore ensure that transgender and intersex persons have access to the criminal justice system by ensuring prompt, thorough, impartial and serious investigation of violence against transgender and intersex people, securing prosecutions and avoiding secondary victimisation. The government must also ensure criminal justice mechanisms are implemented which ensure that the right to privacy and identity is protected where necessary.
- The government should ensure the 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 respectively.
- GOSA must ensure the provision of protective services specific to transgender and intersex survivors of crimes or ensure transgender-inclusive and intersex-inclusive policies are implemented in institutions which provide support services to survivors of violent crimes.

### B. Right to liberty and security of person[9]

The South African Report makes reference to the legislation that has been enacted to provide for the safety and security of persons within the country. Reference in the State Report is made to the Criminal Law (Sexual Offences and Related Matters) Amendment Act. We hereby submit that this legislation lies at the heart of discrimination faced by sex workers in South Africa as it criminalizes consensual commercial sexual intercourse between consenting adults. The continued criminalization of sex work in South Africa is a leading cause for violence encountered by sex workers at the hand of the police who are meant to implement the legislation. Transgender sex workers, and in this context particularly transgender women, are especially at risk as reported incidents of physical as well as verbal abuse are experienced. These sex workers are at the intersectionality of working in a profession which is criminalized within a society where transphobia often leads to violence and are therefore a particularly vulnerable category of persons in need of protection.

The effect of policing sex work has led to the harassment of sex workers by members of the South African Police. The fact that few arrests of sex workers result in prosecutions speaks to the arbitrary nature of arrests and their legality. When they are detained, sex workers are kept in cells that are unhygienic; they are deprived of food, access to the telephone as well as their antiretroviral medication. There have also been instances where transgender sex workers were put in cells with male suspects without regard for their safety or gender identity. In 2009 there was successful litigation against the Minister of Police because sex workers were being arrested and detained arbitrarily and without the intention of bringing them before a Court for prosecution. The harassment, arrests and arbitrary detentions however, continue in contravention of the Court Order.

**Suggested questions for the delegation from the Government of South Africa:**

- When does the GOSA intend on publishing the South African Law Reform Commission's findings on its investigation into Adult Prostitution and when will legislation be introduced into the public space for debate?

[9] Article 6

- What measures has the GOSA put in place to generate evidence and information on the vulnerability of sex workers, including transgender sex workers, to gender-based violence in South Africa?

### Suggested recommendations for the Government of South Africa:

We recommend that:

- The GOSA adopt the position of full decriminalization as recommended by the Commission for Gender Equality and the World Health Organisation in order to ensure the safety and security of sex workers in the industry.

### C. Right to education and culture[10] – Equality in accessing education for transgender and intersex children

There is a lack of education about gender diversity, bodily diversity (specifically intersex variations), and sexual identities in primary and high schools in South Africa – where it is provided, the educators are either not well informed, as they are not trained in the subject, or they allow their prejudices to impact on the subject and thus stigmatise students' understanding of sexual orientation, bodily diversity, and gender identity and expression. The education community is also largely unaware of the issues experienced by transgender, intersex and gender diverse/gender non-confirming youth. The lack of education around, and awareness of, gender, bodily and sexual diversity creates a hostile and discriminatory environment for transgender, intersex and gender diverse/non-conforming youth in schools. There are several issues impacting transgender, intersex and gender diverse/non-conforming children and youth in South African schools. Some of these include[11]:

1. Transgender and intersex youth are bullied and discriminated against by other learners.

Transgender, intersex and gender diverse/gender non-conforming learners are subjected to bullying primarily by other learners, but also by teachers and staff. The bullying can be verbal or physical. The severity of the bullying is dependent on several factors including the type of school and the way the transgender and intersex youth expresses their gender identity, and whether or not their gender identity and sex characteristics are known to others. Bullying tend to

[10] Article 17

[11] Submissions here are largely based on the following Gender DynamiX research report: Sanger, Nadia. (2014). *Young and Transgender: Understanding the Experiences of Young Transgender Persons in Educational Institutions and the Health Sector in South Africa*. Available at http://genderdynamix.org.za/wp-content/uploads/GDXtransyouth2015-web.pdf.

be more common in high school than primary school. Intersex children may be particularly vulnerable to abuse and privacy violations in primary school if teachers and other learners notice that their bodies are not stereotypically female or stereotypically male.

2. Schools lack support systems able to adequately address the specific needs of transgender and intersex learners.

Teachers and administrative staff often try to prevent bullying against transgender and intersex youth in schools. However, support for, and protection of, transgender, intersex and gender diverse/gender non-conforming youths generally comes from *individual* teachers and staff members. There are no systems and structures in place to ensure consistent and sustainable interventions of teachers on behalf of transgender and intersex youth. In many cases, the lack of an organized support system capable of meeting the needs of transgender and intersex youth forces transgender, intersex and gender diverse/gender non-conforming learners to enter into a hostile school environment.

3. There is no mention of gender, sexual, or bodily diversity in the school curriculum.

Gender identity and 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 conforming to the existing gender and sex binaries and stereotypes, and for intersex youth, undergoing invasive and medically unnecessary procedures to do so. The lack of gender identity and expression, bodily diversity and sexual orientation education may also cause transgender persons to misidentify themselves as “gay,” instead of “trans”, and for intersex youth to feel isolated and pathologised. 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 behaviours.

4. The lack of education on gender identity and expression, intersex variations and sexual orientation causes many transgender and intersex people to misidentify themselves for a period of their lives.

Many transgender youth at first misinterpret 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 “trans” language is crucial to a transgender individual’s understanding of gender identity, healthy mental and sexual development, and navigation of puberty and appropriate options available to them at that time.

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 (e.g. *stabane*).[12] 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.[13] This undermines a positive sense of self and causes depression, anxiety and confusion about one’s body, identity and belonging. Early social affirmation of body diversity as a healthy manifestation of human diversity, and access to intersex-positive language are crucial for the self-understanding, self-affirmation and healthy mental and sexual development of intersex children and youth.

5. Sex-segregated toilets constitute major sites of abuse and discrimination, and transgender and intersex learners often choose not to use the toilets at school for fear of harassment and discrimination.

Some transgender and intersex learners do not use the bathrooms at school out of fear of discrimination by other learners. They contain urinating, defecating and changing menstrual items until they are at home in order to avoid the discrimination and sexual assault and harassment by other learners and, at times, educators. It has been reported in 2010 that a school principal in Ga-Ntatelang village near Kuruman undressed a six-year-old intersex child, who “preferred to use the girls’ toilets, and forced the child to use the boys’ toilets instead”.[14] Individual teachers have allowed youth access to staff toilets; however, this only further isolates transgender and intersex learners from other learners at school and enables discrimination to continue.

[12] Swarr, A.L. (2009). ‘Stabane’, intersexuality, and same-sex relationships in South Africa. *Feminist Studies* 35(3): 524–548.
[13] Carpenter, M. & Cabral, M. (Eds.). (2015). Intersex Issues in the International Classification of Diseases – a revision. Available at https://globaltransaction.files.wordpress.com/2015/10/intersex-issues-in-the-icd.pdf.
[14] 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

6. Use of pronouns and forms of address that do not respect the learner's gender identity.

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

7. Sex segregation through use of school uniforms according to a gender binary that is enforced for boys and girls robs gender diverse/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 transgender, intersex and gender diverse/non-conforming pupils in the educational environment is harmful to their dignity, sense of self and educational experience. The discomfort experienced by some gender diverse/non-conforming and intersex 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.

8. Sexual harassment at school.

There have been reports of transgender and intersex children being sexually harassed at school. It was for instance reported that a transgender learner was singled out by his fellow learners (and their older friends who are not learners at the school), who tried to disrobe him, threatened him and posed uncomfortable questions which implied that his gender expression existed because he is afraid of sleeping with men. Such targeted incidences of abuse against transgender, intersex and gender diverse/non-conforming learners force them to stop attending school in order to remain safe, free of abuse and harassment, severely impacting on their rights.

9. Alteration of genderspecific information on matriculation certificates.

Currently, the matriculation certificate for the final high school certificate requires the identification number of the applicant as well as personal details such as forenames to be captured. In the event that a person transitions from one sex to another, or changes their legal gender (which changes their identity number), the gendered information on the certificate makes it impossible for a person to use this certificate, especially if they have altered their forenames

(and surname) and the identification number on the identification card. This often leads to transgender and intersex persons being unable to rely on their qualification when seeking employment and other financial opportunities. There is currently a policy in place that allows for such alterations to be made. The responsible unit, Umalusi, understands this policy to mean that certificates are only re-issued where administrative errors occur and not for reasons of gender transition or legal gender change. They believe that transgender and intersex persons bear the responsibility for proving that the certificate is theirs and not fraudulent. This violates the rights of transgender and intersex persons to privacy and equality by requiring them to divulge private details about their gender identity and bodily characteristics when seeking jobs and other opportunities.

All of the above circumstances are compounded by the fact that there are currently no guidelines for schools to assist learners, parents, teachers, school-governing bodies and other members of school communities on how to socially include transgender and intersex children in their school community. The inclusion and realisation of transgender and intersex children's rights are dependent upon the school community in question and their willingness to include and make provision for transgender and intersex children in their school.

### Suggested questions for the delegation from the Government of South Africa:

- What steps is the GOSA taking towards ensuring that gender identities, gender expression and bodily diversity are discussed more openly in the school environment?

### Suggested recommendations for the Government of South Africa:

- We urge the GOSA to draft and implement national and provincial policies regarding the inclusion and protective measures (among others) for transgender and intersex children in all levels of schools.
- We urge the GOSA to meet with school-governing bodies to implement structures within the schools to enable them 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.

- We urge the GOSA to mandate the implementation of community education programmes about gender identity and expression, bodily diversity (particulary intersex variations and other nonbinary bodies) and sexual orientation. The greater community must have access to educational resources regarding transgender and intersex youth and their needs. Trans and intersex youth must also have safe spaces to turn to for support.
- We urge the GOSA to develop protective school and education policies that safeguard a smooth social transition for transgender, gender diverse/non-conforming and intersex pupils to choose their school attire or uniforms to protect their dignity on school grounds.
- We urge the GOSA to establish new governing and decision-making bodies in the Education sector for the purpose of addressing the concerns related to transgender, intersex and gender diverse/non-conforming youth.
- We urge the GOSA to ensure that transgender and intersex persons seeking to alter their details on the matriculation certificate do so without delay and discrimination.

## D. Right to health[15]

### D.1 Bodily integrity and autonomy, freedom and security of the person related to non-consensual, medically unnecessary treatment/surgery on intersex infants, children and adolescents

It should be noted from the outset that the reference to children here includes infants and adolescents who are characterised as minors by the law. Intersex persons in South Africa are often subjected to non-consensual, medically unnecessary and physically and psychologically harmful sex assignment surgeries during infancy or childhood.[16] 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 and discriminatory notions of normality.[17] Similar to female genital mutilation, such treatments constitute gross

[15] Article 16

[16] Smit, Estian. (2015). *Extracts from Unpublished Review and Analysis of South African Transgender and Intersex Research, Legislation and Policy*.

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

human rights violations. As has been pointed out in a recent document by an international group of intersex activists and experts (including South African 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*."[18]

These human rights violations largely take place because the language used in medical and public discourses to describe and understand intersex bodies is generally stigmatising and pathologising, for instance in the World Health Organisation's *International Classification of Diseases* (ICD)[19] and in South African medical publications.[20] Consent given without positive, affirming language and information cannot be characterised as free and informed consent.[21] Training and education on informed consent, bodily diversity and the right to bodily integrity 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.[22]

In South Africa, when the principle of informed consent is invoked in relation to medical treatments and surgeries on intersex infants and children, the emphasis is on informed consent of the parents of the intersex child, who are consulted in order to reach a decision regarding

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[18] Ibid, pg 10.

[19] Ibid, pg 2.

[20] Rebelo, E., Szabo, C.P. & Pitcher, G. (2008). Gender assignment surgery on children with disorders of sex development: A case report and discussion from South Africa. *Journal of Child Health Care* 12(1): 49–59.

See also Wiersma, R. (2011a). The clinical spectrum and treatment of ovotesticular disorder of sexual development. In New, M.I. & Simpson, J.L. (Eds.), *Hormonal and genetic basis of sexual differentiation disorders and hot topics in endocrinology: Proceedings of the 2nd World Conference*. New York: Springer, 101-103.

See also Wiersma, R., & Ramdial, P.K. (2009). The gonads of 111 South African patients with ovotesticular disorder of sex differentiation. *Journal of Pediatric Surgery* 44(3): 556–560.

[21] Mokoena, Nthabiseng. (2015). Intersex youth: Can we say that consent is truly free, full and informed? Unpublished paper, Page 3.

[22] Ibid pg 3.

surgery for their child.[23] This approach focuses primarily on the parents, informing them of the potential risks and complications of surgery, instead of focusing on the child's rights to bodily integrity, bodily autonomy, privacy, freedom, security, and sexual and reproductive health.[24] Notwithstanding an acknowledgement that all decisions by the clinical team and parents should take into account the rights and/or best interests of the child, the power to decide over the child's body remains almost exclusively in the hands of clinicians and parents, and what they consider to be the child's best interests.[25]

Information about the number of surgeries performed on intersex infants, children and adolescents in South Africa is not easily accessible. However, judging from the life stories of intersex persons in South Africa,[26] as well as local medical publications[27], such surgeries remain common despite the severe physical and mental health risks involved. This is in contravention of the call by the United Nations *Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* that all States "repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, 'reparative therapies' or 'conversion therapies', when enforced or administered without the free and informed consent of the person concerned.

[23] Smit, 2015.

[24] Ibid.

[25] Maharaj, N.R., Dhai, A., Wiersma, R. & Moodley, J. 2005. Intersex conditions in children and adolescents: Surgical, ethical, and legal considerations. *Journal of Pediatric and Adolescent Gynecology* 18(6): 399−402. See also Rebelo et al, 2008. See also Wiersma, R. 2011b. Ovotesticular disorder of sex development in Southern Africa. Doctoral thesis, Erasmus University Rotterdam.

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

[27] Wiersma, R. 2001. Management of the African child with true hermaphroditism. *Journal of Pediatric Surgery* 36(2): 397–399. See also Rebelo et al, 2008. See also Wiersma, R. 2004. True hermaphroditism in Southern Africa: The clinical picture. *Paediatric Surgery International* 20(5): 363–368. See also Wiersma, R. (2011a). The clinical spectrum and treatment of ovotesticular disorder of sexual development. In New, M.I. & Simpson, J.L. (Eds.), *Hormonal and genetic basis of sexual differentiation disorders and hot topics in endocrinology: Proceedings of the 2nd World Conference*. New York: Springer, 101-103. See also Wiersma, R. 2011b. Ovotesticular disorder of sex development in Southern Africa. Doctoral thesis, Erasmus University Rotterdam.

He also calls upon them to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups".[28]

For adolescents who are at the age where their consent must be obtained for surgical procedures, their interaction with medical practitioners is often dictated by power imbalances that leave very little choice.[29] It has been reported that because of this power imbalance, intersex youth are often at the mercy of their practitioners who exude authority over any decision that an intersex adolescent could make. Consequently, this power imbalance leaves the medical practitioner's decision on surgery unchallenged even when there is not enough evidence to support the suggested procedure.[30]

Concerns with the current treatment of intersex children in medical institutions therefore include the following:

1. An informed consent approach that focuses on getting consent from parents and ignores the child's right to bodily integrity and autonomy. The current medical practice of an informed consent approach that focuses on informing parents of the potential risks and complications of medical treatment and surgery for their child, leaves the decision over the child's body exclusively to clinicians and parents, often pre-empting the possibility of informed consent for the intersex person later in life.
2. Sex assignment surgery is frequently harmful to children and poses serious risks to their mental and physical health. Sex variations rarely constitute life-threatening conditions and in most cases sex assignment surgery is not medically necessary.[31] When an intersex child is forced to undergo surgery (often requiring repeated follow-up medical interventions throughout childhood and adolescence), the child frequently suffers physical and emotional harm for the rest of their life.[32]
3. The parents' decision to subject their intersex child to sex assignment surgery often revolves around socio-cultural and psychological fears as opposed to medical

[28] 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. See also pp.18-19.
[29] Nthabiseng Mokoena (note 20), Page 3.
[30] Ibid, pg 3
[31] Diamond, M. & Garland, J. 2014. Evidence regarding cosmetic and medically unnecessary surgery on infants. *Journal of Pediatric Urology* 10(1): 2–6.
[32] 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

necessity.[33] Intersex variations are generally framed as a condition or disorder to be managed, thereby further reinforcing stereotypical sex standards and discriminatory notions of normality. Typically, it is assumed that some form of treatment is necessary for the child to be accepted as "normal."

4. Non-surgery is a marginal option. Despite the fact that sex reassignment surgery is usually unnecessary to preserve the health of the child, professionals continue to offer parents the option of non-consensual surgery in conformance with societal prejudices.

### Suggested questions for the delegation from the Government of South Africa:

- How is the GOSA ensuring the protection of the rights of transgender and intersex children?

### Suggested recommendations for the Government of South Africa:

- We urge the government of South Africa (GOSA) to 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.
- We urge the GOSA 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.
- We urge the GOSA to 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"[34] and to prohibit medically unnecessary surgeries on intersex children.
- We urge the GOSA to establish and preserve intersex advocacy and awareness organisations to ensure that doctors and the public are aware of intersex children's right

[33] Rebelo, E., Szabo, C.P. & Pitcher, G. (2008). Gender assignment surgery on children with disorders of sex development: A case report and discussion from South Africa. *Journal of Child Health Care* 12(1): 49–59.

[34]The 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.

to self-determination and the physical and mental harms of medically unnecessary treatments and surgeries.

- We urge the GOSA to 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,[35] and take steps to ensure that such human rights violations are ceased,[36] 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,[37] and that redress mechanisms and reparations are provided where individuals have been subjected to forced, coercive or involuntary procedures as infants or children.[38]
- We recommend that the GOSA investigate, draft and enact health legislative and policy measures which prohibit non-consensual, medically unnecessary surgeries on intersex children, 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.

### D.2 Unequal access to health care

In addition to facing the same socio-economic and socio-political barriers to quality health care faced by South Africans generally, intersex and transgender persons also have to navigate a healthcare system which is unresponsive to their specific healthcare needs.

Apart from general healthcare that is transgender friendly and inclusive, many transgender persons also require access to gender affirming healthcare services to enable them to alter their bodies in ways that affirm their gender identities. Depending on the individual in question, they may require access to hormone therapies and/or various surgical procedures, and/or other medical procedures and forms of healing, including traditional/indigenous healing. Some transgender persons may require access to psychosocial and mental health services.

[35] 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.
[36] 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.
[37] WHO, 2014, pp. 7-8, 14-15.
[38] WHO, 2014, pp.15-16.

In the government-subsidised public sector, transgender people continue to face several obstacles. There is a dearth of transgender-specific healthcare services that provides gender affirming care. For example, there are only two hospitals in the entire country providing the full range of trans-specific healthcare and they have surgery waiting lists of up to 25 years and longer. Additionally, only one of these hospitals follows the latest guidelines of the World Professional Association for Transgender Health (WPATH)[39] and actively works together with transgender organisations to provide trans-friendly healthcare. 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 psycho-social treatment are yet to turn their focus on the transgender and intersex communities, even though the transgender community is cited as facing higher risks of requiring both.[40]

There remains a lack of focused policy guidelines which could assist transgender people in navigating the healthcare system and health professionals in opening up the healthcare system for transgender people, particularly for those who wish to access gender affirming healthcare services in order to transition or alter their bodies. The medical sector is also unable to keep up by training medical professionals with the clinical skills to provide adequate gender affirming and trans-specific healthcare. Additionally, health professionals and officials barricade access to healthcare for transgender persons by overt discrimination and antagonism. As part of the broader community, doctors and nurses tend to share the attitudes and values of the general population.[41]

In the private healthcare sector, where individuals are expected to settle the medical bill themselves, the thin cohort of trans people who have the means face exorbitant prices, poorly

[39] World Professional Association for Transgender Health (2011). *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, Version 7*. Available at http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=4655.

[40] Müller, A. 2013. Teaching lesbian, gay, bisexual and transgender health in a South African health sciences faculty: Addressing the gap. *BMC Medical Education* 13(174), 7 pp.

[41] Ibid.

regulated insurance and service provider industries, as well as the classification of trans-specific healthcare as wholly cosmetic and therefore outside of the scope of medical aid funding.[42]

Section 27 of the Constitution enjoins the state to ensure the progressive realisation of everyone's right to health care services. The National Health Act[43] supplements this constitutional directive by issuing best practice rules aimed at providing the best possible healthcare services to citizens. The National Health Act expressly protects and promotes the rights of vulnerable groups, including women, children, older persons and the disabled. However, transgender and intersex people are not specified as a vulnerable group. As a result of the National Health Act, the national Department of Health has initiated and implemented various strategies in order to improve the health status of the South Africans that do not speak directly to transgender and intersex specific healthcare. One such initiative is the National Health Insurance (NHI). The main objectives for the implementation of the NHI in South Africa are to bring reform, improve service and to promote equity and efficiency in the healthcare system.[44] Throughout this document, the issue of equity is discussed in detail, yet transgender and intersex people seem to have been left out of the policy altogether.

Transgender and intersex people are further alienated from accessing heath care as the whole system operates under the binary assumption that every person's body is either stereotypically male or stereotypically female, and that a male body is linked to a stereotypical gender identity and gender expression as a man, and a female body to a stereotypical gender identity and gender expression as a woman. This leaves a large number of transgender, gender diverse/non-conforming, non-binary, intersex and body diverse persons completely erased from healthcare services. The prevailing cisnormative and binary sex institutional psyche leads to an exclusive healthcare system which denies whole subsets of the population access to quality appropriate healthcare.

This frame of classification severely impacts on the treatment of intersex persons in the healthcare system. For intersex persons, contact with healthcare services often entails traumatising encounters with healthcare professionals and non-consensual sex assignment procedures. In these procedures, intersex infants and adolescents are subjected to harmful,

[42] 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. Available at http://genderdynamix.org.za/wp-content/uploads/GDXtransyouth2015-web.pdf.

[43] Act 61 of 2004.

[44] Department of Health, National Health Insurance [published in GG in December 2015].

medically unnecessary treatments and surgical procedures with long-term adverse consequences without their full, free and informed consent.

Although the promulgation of the Alteration of Sex Description and Sex Status Act No. 49 of 2003[45] allows intersex persons to change their legal sex on their identity documents without having to undergo surgical or medical treatment, the road to accessing this right is not a friendly one. Intersex persons are subjected to providing medical proof of being intersex and proof of having lived in their gender role for an unbroken period of two years, which are invasive and cumbersome requirements and severely delays how soon they can apply for a change in their sex descriptor.[46] Moreover, it has been reported that the Department of Home Affairs unlawfully asked intersex applicants for proof of surgery, thereby contravening Act 49 of 2003.

Transgender applicants who want to change their legal gender in terms of Act 49 are subjected to similar delays, and need to submit two reports by medical practitioners to the Department of Home Affairs testifying to medical or surgical procedures that have changed their sexual characteristics resulting in gender reassignment.

For both transgender and intersex applicants, the submission of reports about their bodies and identities involve a violation of their privacy, dignity and the confidential nature of their relationships with medical, mental health and social work practitioners. It turns these professionals into gatekeepers enlisted by the South African government and Department of Home Affairs to help regulate, monitor and police people's bodies, gender identities and gender expressions. This constitutes an untenable situation, as it compromises healthcare relationships that should primarily be concerned with the health, wellbeing and support of transgender and intersex clients, who already belong to the most marginalised groups in society. Moreover, the majority of transgender and intersex people do not even have access to friendly and inclusive general healthcare, let alone to healthcare practitioners and social workers who would have the necessary knowledge to write the reports required in terms of Act 49. The Act therefore excludes the majority of people it seeks to benefit.

### Suggested questions for the delegation from the Government of South Africa:

[45] Alteration of Sex Description and Sex Status Act No. 49 of 2003. Available at http://www.gov.za/sites/www.gov.za/files/a49-03.pdf.

[46] Department of Health, National Health Insurance [published in GG in December 2015].

- What measures are the GOSA taking to ensure the progressive realisation of the right to health care services for the transgender and intersex populations?

**Suggested recommendations for the Government of South Africa:**

- The GOSA should put in place policy directives for healthcare practitioners to aid in ensuring non-violent and non-discriminatory treatment of trans and intersex persons.
- The GOSA ought to ensure that health professionals acquire the requisite skills through trans-sensitive and intersex-sensitive training and curricula.
- The GOSA must ensure that trans-specific and intersex-specific healthcare services, which are trans and intersex friendly, affirming and informed by human rights approaches, are included as part of general healthcare services at all levels of healthcare provision.
- The GOSA must ensure that policy and legal reform that seeks to respect, protect and realise 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.
- The GOSA must ensure that legislation and policies do not require healthcare or other professionals to report on their clients for the purposes of legal gender recognition.

## III. THE SOUTH AFRICAN GOVERNMENT'S FAILURES TO RESPECT, PROTECT AND PROMOTE THE RIGHTS OF TRANSGENDER AND INTERSEX PERSONS IN SOUTH AFRICA – THE PROTOCOL

### E. Elimination of discrimination[47] and the right to dignity[48]

The Alteration of Sex Description and Sex Status Act[49] (Act 49) is South Africa's legal gender recognition law for transgender and intersex persons. It allows transgender and intersex persons to alter their legal gender in the National Birth Register and in their South African

[47] Article 2

[48] Article 3

[49] Alteration of Sex Description and Sex Status Act No. 49 of 2003. Available at http://www.gov.za/sites/www.gov.za/files/a49-03.pdf.

identity documents. This law was enacted to fill the void left by the repeal of section 28 of the Births, Marriages and Deaths Registration Act.[50]

Act 49 allows the following categories of persons to make an application to the Director-General of the National Department of Home Affairs for the alteration of their legal sex descriptor, provided they submit certain medical and/or psychosocial reports:[51]

(1) A person whose sexual characteristics have been altered by:
    (1a) medical or surgical treatment resulting in gender reassignment; or by
    (1b) evolvement through natural development resulting in gender reassignment.
(2) A person who is intersex.

When promulgated in 2003, this piece of legislation was progressive by world standards, but over the past few years several other countries (e.g. Argentina[52] and Malta[53]) have enacted much more progressive gender recognition laws based on a self-identification principle. Although South Africa is a signatory to the *Yogyakarta Principles* (2007),[54] the South African government has yet to reform its laws and policies to comply with self-identification and other human rights standards for gender identity and body diversity articulated in this instrument.

Furthermore, the manner in which the Department of Home Affairs administrates Act 49 renders many transgender and intersex persons vulnerable and effectively denies them access to their rights to education, health, housing and employment, among others.[55]

The lack of effective and efficient administration of Act 49 is the result of various factors, all of which the state does not address in their reports to the Committee.

1. Firstly, there is a lack of accurate application and understanding of the Act by officials charged with administering the Act at the Department of Home Affairs. This has resulted

[50] Births, Marriages and Deaths Registration Act 81 of 1963.
[51] Act 49, section 2(1).
[52] For Argentina's Gender Identity Law, see https://globaltransaction.files.wordpress.com/2012/05/argentina-gender-identity-law.pdf.
[53] For Malta's Gender Identity, Gender Expression and Sex Characteristics Act No. XI of 2015, see http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26805&l=1.
[54] *Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity*. (2007). Available online at http://www.yogyakartaprinciples.org/.
[55] 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. Available at http://mg.co.za/article/2014-10-09-transgender-goes-on-hunger-strike-over-id-application.

in some branch offices insisting on proof of genital surgery from applicants. This is a misinterpretation of the Act, specifically section 2(2)(b) of Act 49, which requires that a gender reassignment application must be accompanied by (1) the applicant's birth certificate[56] and (2) two medical letters from two separate and independent health providers testifying to the nature of the **"surgical <u>or</u> medical treatments"** administered as well as the results from either treatments.[57] 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.[58] However, the Act merely makes surgical treatment optional for gender reassignment applicants and does not require any medical or surgical treatment for intersex persons. By making surgical treatment mandatory, the Department of Home Affairs officials impeded access by transgender and intersex people to various rights.

2. Secondly, the result of a lack of national directives from the Department of Home Affairs has meant that transgender and intersex people often have to wait unacceptably long periods of time for their applications to be accepted and processed by the Department.[59] From empirical experience of Gender DynamiX, Iranti-org and Legal Resources Centre and other partner organisations, there have been complaints from persons who have waited, and are still waiting, for their identity documents to be altered by the Department. From the cases on file, the waiting periods range from two years up to seven years. This waiting period forced on applicants is clearly egregious when one takes into consideration the fact that the average waiting period for most alterations to identity documents is three months.
3. Third, when an application is denied, no reasons are provided by the various branch offices of Home Affairs. This makes it difficult and unduly burdensome on the applicants seeking alternative legal redress to lodge appeal applications in terms of the Act.[60] This effectively denies transgender persons their rights to equal protection and benefit of the law. At times, the applicants conduct follow ups and are told that their applications got

[56] Section 2(2)(a)
[57] Act 49, section 2(b) – (c).
[58] Gender DynamiX & Legal Resources Centre. (2015). *Briefing Paper: Alteration of Sex Description and Sex Status Act, No. 49 of 2003*. Available at .
[59] Ibid.
[60] Act 49, section 2(3)-(4).

"lost" without the Department providing any form of adequate relief or an expedited process.[61]

4. Lastly, as a result of the lack of directives, there are currently no existing measures to ensure the protection of marriages where a transgender or intersex person changes their sex descriptor after getting married. South African marriages are currently governed in terms of two separate Acts, namely, the Marriage Act,[62] which governs heterosexual unions, and the Civil Unions Act,[63] which governs heterosexual and same-sex unions. However, there is no bridging regulation or process 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 loophole in legislation often means that transgender and intersex persons are forced to divorce their spouses in order to have their sex descriptors changed in their identity documents, and to access their rights. Often they are not told by the Department that they have to divorce their spouses; they are rather forcibly divorced, without their knowledge, by the Department. In some instances the Department simply refuses to alter the identification sex descriptor without a divorce order. Additionally, the Civil Union Act still uses formulations that assumes a gender binary (i.e. same-sex or opposite sex unions), thereby excluding intersex and other body diverse persons, as well as nonbinary transgender and other gender diverse persons who may not fall within, or identify with, binary female and male categories. It must also be noted that some individuals have fluid gender identifications and expressions that may move across and between different gender categories, which also need to be accommodated in legislation.

The problems created by the lack of Act 49 regulatory directives from the Department are not only isolated to interactions between transgender and intersex persons and the Department of Home Affairs. The lack of an efficient and effective processing system has resulted in transgender and intersex persons being exposed to extreme human rights violations by both state and non-state actors. These human rights violations have been completely overlooked by the State in their reports to the Committee.

[61] Ibid.
[62] Marriage Act 25 of 1962.
[63] Civil Union Act 17 of 2006.

### Suggested questions for the delegation from the Government of South Africa:

- How is the Government of South Africa addressing gaps in the implementation of the Alteration of Sex Description and Sex Status Act 49 of 2003?
- How is the Department of Home Affairs addressing the gaps in the current marriages framework which as stated, violates and impugns on the dignity of transgender and intersex persons?
- With the current inconsistencies in application, and the upcoming South African elections, how will the Government of South Africa insure that Act49 does not impinge on transgender and intersex citizen's right to vote?

### Suggested recommendations for the Government of South Africa:

- We urge the Committee to mandate the GOSA to review and immediately process any pending Act 49 applications and provide the applicants with written decisions on all successful and unsuccessful applications as is required by Act 49.
- We urge the GOSA to provide for legal recognition using a self-identification model in accordance with the Yogyakarta Principles, 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 GOSA must be encouraged to 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.
- The GOSA must 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.

- The Department of Home Affairs must be advised to address the gaps in the current marriages framework which as stated, violates and impugns on the dignity of transgender and intersex persons.

Should the Committee have any questions about the information in the report or wish to communicate any related information to the organisations submitting this report, please do not hesitate to contact the contributing organisations:

**Gender DynamiX (hereinafter GDX)**

GDX, established in 2005, is the first organisation based in Africa to deal specifically with transgender issues. The organisation is currently based in Cape Town, South Africa. The organisation uses various advocacy methods to raise awareness about the structural human rights violations experienced by transgender persons as a result of a lack of access to the right to health, citizenship, education, safety and security and freedom of expression. GDX provides resources, information and support for transgender persons, their partners, family, employers and the general public. Central to its advocacy strategy is the education of medical service providers, teachers, government officials and the community.

**Tshepo Kgositau** (regional@genderdynamix.org.za)

**Estian Smit** (advocacy1@genderdynamix.org.za)

**Iranti-Org**

Iranti-org is an African transgender and lesbian focused media advocacy organisation based in Johannesburg, South Africa. Founded in 2012, Iranti-org works within a human rights

framework, which it uses for raising issues on gender identities and sexual orientation. It was formed with the clear intention of building local partnerships and movements that use media as a tool and platform for gathering evidence, advocacy and educational interventions across Africa. Through the use of evidence-based documentation and various media tools such as video, photography, audio recording, among others, Iranti-org seeks to establish an archive of African Queer memory that affirms and challenges the traditional notions of gender identities and sexual orientation.

**Tshegofatso Joshua Sehoole** (sehoole@iranti-org.co.za)

**Legal Resources Centre (hereinafter LRC)**

The LRC is a public interest, non-profit law clinic in South Africa that was founded in 1979. Since its inception, the LRC has shown a commitment to working towards a fully democratic society underpinned by respect for the rule of law and constitutional democracy. The LRC uses the law as an instrument for justice to facilitate the vulnerable and marginalised to assert and develop their rights; promote gender and racial equality and oppose all forms of unfair discrimination; as well as to contribute to the development of human rights jurisprudence and to the social and economic transformation of society. Through its Equality and Non-Discrimination project ("the project"), the LRC utilises creative and effective solutions to support its clients. These include using a range of strategies such as impact litigation, law reform initiatives, participation in development processes, education and networking within and outside of South Africa.

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