

**UNIVERSAL PERIODIC REVIEW – SOUTH AFRICA**  
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This is a summary of the submission presented by the Transgender and Intersex Coalition (Legal Resources Centre (LRC), Gender DynamiX (GDx), Iranti-org, and AIDS and Rights Alliance for Southern Africa (ARASA)). It focuses on the plight of transgender and intersex persons in South Africa seeking to have their rights respected, protected and fulfilled.

**Contextual Analysis:** Under UPR Cycle 2 South Africa received 4 recommendations from: The Netherlands (124.81); France (124.51); United Kingdom of Great Britain and Northern Ireland (124.81), Finland (124.85). In response to South Africa's previous UPR reporting cycle, 14 recommendations were accepted and 1 recommendation was noted. I am not sure why you pick those four recommendations? In the context of those recommendations, this submission will detail the manner in which the government has not managed to address the rights of transgender and intersex persons, in these responses and in its subsequent actions.

**Social context:** 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. 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 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. 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.

**Legal Context:** South Africa has enacted The Alteration of Sex Description and Sex Status Act 49 of 2003 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 sex 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. However, the manner in which DHA implements Act 49 is both exclusionary and discriminatory than the law's intended purpose, and is 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. The lack of just and effective implementation of Act 49 is the result of various factors, none of which the state addresses.

**Policy Context:** 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**). 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 for transgender people in navigating the healthcare system.

Recommendations from the Transgender and Intersex Coalition:

1. Ensure that such violence on the basis of Gender identity and expression is ended through enacting protective legislation, regulations, policies and practices in the spheres of crime prevention, education, access to healthcare
2. Ensure that current criminal legislation is amended to mandate tougher prison sentences for crimes motivated by hatred and prejudice towards transgender and intersex persons.
3. Ensure collection of information, including statistical and research data, on violence against transgender and intersex persons so as to enable policy formulation and implementation.
4. 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
5. 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.
6. 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; 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;
7. 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.
8. 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.
9. 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.

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