

Submission to the United Nations Universal Periodic Review (4th Cycle) on the Experiences of Trans and Intersex Persons in Zambia

State under Review: Zambia

Jointly Submitted by Transbantu Association Zambia and Gender Dynamix

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Contributing Organisations

1. Introduction to the authors of the submission

1.1 Gender Dynamix (GDY) is the first registered trans and gender diverse-led organisation in Africa that focuses explicitly on advancing, promoting, and securing the human rights of trans and gender diverse persons in Southern Africa. The organisation's four strategic priority areas include legal gender recognition based on self-determination, accessible gender-affirming healthcare, inclusive quality education, and regional movement strengthening. GDY's strategic drivers include advocacy and research, capacity enhancement, facilitating community

1.2 Transbantu Association Zambia (TBZ) is a youth-led organisation that has been serving trans-diverse and intersex communities since 2012. TBZ seeks to create an enabling environment where trans-diverse and intersex people enjoy their full potential and access social justice and opportunities. It does this by supporting the trans-diverse and intersex communities in Zambia through evidence-based advocacy, collaboration, outreach and practical support, including peer and parent support groups and counselling. TBZ aims to build a strong trans-diverse and intersex movement through training and capacity building. TBZ advocates for policies and practices that respect the human rights of trans and intersex people.

Contacts of the contributing organisations

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2. Introduction

- 2.1 This submission is presented for consideration as part of the Universal Periodic Review (UPR) 4th Cycle Stakeholder Report to the United Nations Human Rights Council on behalf of Transbantu Association Zambia and Gender Dynamix
- 2.2 Transgender, gender diverse and intersex persons have traditionally been marginalised by society and face extreme vulnerability. Their fundamental rights, such as the right to life, liberty, equality, expression, privacy and health, are violated due to gender and sex identity. They experience indignity, inequality, discrimination and violence in the hands of family and society at large.
- 2.3 This shadow focuses on the plight of transgender, gender diverse and intersex persons in Zambia seeking to have their rights respected, protected, and fulfilled.
- 2.4 The submitting organisations are of the view that the challenges faced by transgender, gender diverse and intersex persons in Zambia are not sufficiently addressed in the national reports. Thus, this submission provides further information to ensure that the review of Zambia is inclusive and cognizant of the rights and challenges faced by transgender, gender diverse persons and intersex.
- 2.5 Zambia has demonstrated its interest in protecting the human rights of all its citizens by signing and ratifying various international human rights instruments, such as the International Covenant on Economic, Socio and Cultural Rights (ICESCR) in 1984, the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2010 and the Convention on the Elimination of all Forms of Discriminations Against Women (CEDAW) in 1985. By acceding to the mentioned treaties, Zambia accepted to be bound by obligations to respect, protect, and fulfil human rights for its nation under the rule of human rights laws both domestically and internationally.

3 Right to health / Access to healthcare

- 3.1 Every individual is entitled to medical treatment on the basis of need which also respects their fundamental human dignity and rights. Every person must be able to access treatment based on their needs.
- 3.2 Article 12 of the ICESCR obliges Zambia to ensure for its citizens the right to mental and physical health by providing the highest attainable standard of health services. The article implicitly caters for all citizens with equality and no prejudices¹. The practicality of this article is underpinned by the general preamble of the covenant, which refers to human dignity attached to all human beings, and requires an equal treatment approach to all persons.

- 3.3 CEDAW, article 12, also reiterates the right to health to the citizens who identify as women due to their specific needs articulated by their bodies and gender identity. Like ICESCR, it sets the right to health care as the responsibility of the state, which is Zambia in this case, to take all necessary and appropriate efforts to ensure with full equality the non-discriminatory access to reasonable health services. Article 16 of the African Charter on Human and Peoples rights assures the right to enjoy the best attainable state of physical and mental health and is the States obligation to ensure that everyone accesses medical care.ⁱⁱ
- 3.4 Currently, the right to health of transgender, gender diverse and intersex persons in Zambia is neither affirming nor equitably and reliably accessible due to criminalising laws. Criminalising consenting same-sex practices subjects transgender, gender diverse and intersex persons to increased exposure to HIVⁱⁱⁱ. Article 15 of the Zambian Constitution has a provision for freedom from torture and inhuman or degrading treatment. However, athletes in Zambia have been subjected to degrading treatment at the hands of both local and regional sports associations. They are exposed to stereotyping and degrading treatment by health practices such as sex testing.^{iv}
- 3.5 The State legislature has enabled the health system to promote inequalities among disadvantaged populations accessing healthcare. For the Zambian National Football Association to confirm that it is compelled to carry out sex tests on football players clearly indicates how the health system is used to cause harm to gender diverse and intersex identities.^v This is further a violation of the right to privacy. As a Member State to both AU and UN, Zambia has not fully lived up to the obligation to ensure that every citizen exercises their right to health or access to healthcare in the context of transgender, gender diverse and intersex identifying persons.

Recommendation

- Private and public healthcare should provide affirming health services for transgender, gender diverse and intersex persons
- Protect intersex minors and adults from non-consensual and coercive/ enticed sex change surgeries and/ or hormonal replacement therapies
- Uphold bodily integrity and autonomy of athletes who identify as transgender, gender diverse and intersex
- Government and sports disciplines should uphold and respect the self-identity and expression of individuals and athletes who identify as transgender, gender diverse and intersex to curb psychological and physical harm done by conversion therapy to the aforementioned groups in Zambia
- Lobby the medical institutions to add to its curriculum sensitive and appropriate topics to ensure that transgender, gender diverse and intersex issues are included in curriculum development processes as part of both undergraduate and postgraduate training to enhance sensitivity and access to comprehensive tailor-made services
- Collaboratively engage with key stakeholders; government should organise continuing professional development on transgender, gender diverse and intersex health training and

advocacy events

4. Access to education

- 4.1 The ICESCR article 13 puts both positive and negative obligations onto the states' parties to the covenant to ensure the right to education through free education programmes that are fully inclusive of all people without any distinction based on their varying identities.^{vi}
- 4.2 The article emphasises that free education programmes should be made available for all persons at all levels of education, such as primary, secondary, tertiary, and vocational levels. The interpretation of the above emphasis is that this section of the treaty legally binds states to practice the principle of equality and non-discrimination in the implementation of inclusive education action plans.
- 4.3 While education serves as an enabling mechanism in human life, it is also defined as the key to maintaining tolerance, peace and stability of a country, and all individual citizens have a role to play in ensuring peace and stability. As a result, this is possible only if all persons are treated with dignity and given equal opportunities within society.
- 4.4 More importantly, article 13 brings a negative obligation for states which directs them to avoid interference with the bodily autonomy of individuals in the name of providing education. This part is crucial in protecting the marginalised groups who have been denied dignity and access to vital services like education solely on the basis of their gender identity, sex characteristics or sexual orientation. Article 10 of CEDAW calls for states' parties to recognise and enact professional and vocational education programmes for diverse gender identities. It charges states with the responsibility to eliminate traditional stereotypes that put particular gender identities in a disadvantaged position.^{vii}
- 4.5 We commend the government of Zambia on developing guidelines and curriculum on comprehensive sexual and reproductive health for in-school and out-of-school adolescents and youth. This information has been included in both primary and secondary school curriculum.
- 4.6 Unfortunately, teachers and those in charge of implementing the curriculum do not have the information and knowledge to teach about issues related to sexual orientation, sex characteristics (difference of sex development) and gender identity. Thus, those aspects of the curriculum are often not taught or available. Further, based on reports from our community, adolescents not in school do not have access to the comprehensive sexual and reproductive health curriculum. They often have to turn to the internet for information where they are unable to find locally and culturally specific information on sexual orientation, the difference in sex development and gender diversity.
- 4.7 Schools have identified guidance teachers who work with health staff to ensure that learners in learning institutions have access to sexual and reproductive health services. However,

contraceptives are not available in school resulting in young people and adolescents having to access health facilities for access to contraceptives, including condoms. This is a significant barrier, especially for lesbian, gay, bisexual and transgender adolescents who are reluctant to access health facilities for fear of stigma and discrimination from healthcare workers.

4.8 Further, the lack of clarity regarding the age of consent for when individuals can independently access contraceptives makes it more difficult for adolescents to access contraceptives.

Recommendation

- Ensure sexual orientation, gender identity, gender expression and sex characteristics are included in basic education and higher learning institution policies
- Add gender identity and expression, sex and sexual orientation education as part of the curriculum for training pre-service teachers in higher education

5. Gender Marker Change

5.1 In 2017 the high court of Zambia made a ruling to allow intersex identifying persons to legally change their names and gender marker in their legal documents, and this was done as a consideration that the individuals need to be allowed to assign themselves their gender identity.^{viii} This signifies progress by the State. However, the same needs to be extended to transgender identifying persons in Zambia.

5.2 According to the National Registration Act 19 of 1964, citizens can change their identity documents if they do not reflect their true identity^{ix}. Though there are these provisions in the law, transgender and gender diverse identifying persons are unable to make changes in their identity documents and thus subjected to wrongful arrests under sections 155 and 310(a) of the penal code,^x because their preferred identities do not resonate with their legal identity documents and can be assumed that their intentions were to deceive or mislead/masquerade as another individual. These provisions have and can be used to target LGBT people. Further, they entrench stigma and discrimination facing the community, make young LGBT people reluctant to access social and cultural spaces and health services, and report violations of their rights.

Recommendation

- Repeal sections 155 and 178 of the Penal code
- Amend the National Registration Act to enable transgender and intersex identifying persons to self-determine their identities and allow individuals to change their gender markers on identity documents

ⁱ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

ⁱⁱ <https://www.achpr.org/sessions/resolutions?id=212>

ⁱⁱⁱ Criminalization of Sexual and Gender Minorities and Its Consequences for the HIV Epidemic in Zambia: A Critical Review and Recommendations

<https://www.ingentaconnect.com/content/wk/jnc/2021/00000032/00000004/art00004>

^{iv} Zambian woman footballer sex tested because FIFA allows it: Barba Banda's fundamental rights violated

[Zambian Woman Footballer Sex Tested Because FIFA Allows It | Human Rights Watch \(hrw.org\)](#)

^v Zambian woman footballer sex tested because FIFA allows it: Barba Banda's fundamental rights violated

[Zambian Woman Footballer Sex Tested Because FIFA Allows It | Human Rights Watch \(hrw.org\)](#)

^{vi} Article 13 ICESCR <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

^{vii} Article 10 CEDAW <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

^{viii} <https://www.fandmglobalbarometers.org/wp-content/uploads/2021/01/07-FM-CP-Zambia.pdf>

^{ix} National Registration Act, 19 of 1964

^x Penal Code, 1931