



**MINISTRY OF JUSTICE CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA**

**KEY NOTE ADDRESS BY MINISTER RONALD LAMOLA SA-EU
DIALOGUE ON POLICY IMPROVEMENTS FOR TRANSGENDER &
INTERSEX PERSONS CONFERENCE HELD AT THE SHERATON
HOTEL, IN PRETORIA ON 4 NOVEMBER 2021**

As we gather here today I have no doubt that this gathering is a historic one for our country.

The outcomes of our collective ideas and reflections today must culminate in distinct and progressive changes in the lives transgender and intersex people.

This conference comes at a critical time in South Africa's development and history. On the 13th of October we marked the 30th anniversary of South Africa's Pride march.

Addressing the crowd at the inaugural march, Simon Nkoli said; "I am black and I am gay. I cannot separate the two parts of me into primary or secondary struggles. They will be all one struggle".

Six years later a new society was founded. In this new society the struggles that Simon Nkoli spoke of were to be eradicated.

Our forebears ushered us into a democratic state - at the core of that democratic state is a Constitutional basis which we find in the preamble of our Constitution.

In its preamble the Constitution requires us to “**Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; Improve the quality of life of all citizens and free the potential of each person**”.

In the year in which we mark the 25th anniversary of our Constitution and 30th year of the Pride March, I think it is historically fitting for us to place this Constitutional provision on trial at this conference.

In placing this provision on trial, we must recognise the positive strides we have made towards its implementation. Chief amongst those is the promulgation of the Promotion of Equality and Prevention of Unfair Discrimination Act.

Through this legalisation the democratic government recognises that significant progress has been made in restructuring and transforming our society and institutions. Discrimination has no place in our constitutional democracy.

But despite this, systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes, undermining the very aspirations of what our constitutional democracy sought to achieve.

As we mark the 25th anniversary of our Constitution it is appropriate that we revisit legislation such as the Promotion of Equality and Prevention of Unfair Discrimination.

In so doing we must assess to what extent has the consolidation of our democracy matured to address systemic inequalities generated in this context by discriminatory practices, by patriarchy, homophobia, transphobia, toxic masculinity, toxic masculinity and stigmatisation.

One of the threats to the full realisation and implementation of our Constitution is the lack of consciousness in our communities.

Equality is still conditional in many of our communities.

In many of our communities for one to be treated as an equal some sort of performance, some sort of trying to be something one is not, is required.

That “performance” is often expressed in assimilating to whiteness or to class or ethnicity or, in other cases, what is traditionally viewed and perceived as male or female and the roles that are associated with them.

As result our communities and some state institutions remain tone deaf to the needs of our people. The State is not built to even deconstruct patriarchy - let alone address the rigidity of gender binary policies and dispositions.

In my view the position paper titled “***Keeping the Promise of Dignity and Freedom for All*** “ Gender DynamiX and the Legal Resource Centre (which I hope we have all read) elegantly defines the nature of the problem in the legal system.

In problematising **the Sex Description and Sex Status Act 49 of 2003** the position paper makes its case as follows:

Firstly the current conceptualisation and application of the law on gender recognition in the form of Act 49 advances indignity, inequality and curtails the enjoyment of constitutional and other freedoms for trans and gender diverse persons.

Secondly this law promotes approaches to legal recognition that are misaligned to human rights imperatives, including the right to self-identification, self-determination and non-pathologisation, bodily autonomy and bodily integrity.

Thirdly the law does not take into account gender diversity and therefore compromises and undermines the constitutional rights of trans and gender diverse persons.

As a result the states attempt at challenging and eradicating gender-based violence and femicide may very well be ineffective in so far as it relates to trans and gender diverse persons.

When persons are deprived of legal recognition of their own identities, it results in a multitude of social, economic, political and legal challenges.

The position papers is impressive in that it is really a forward-looking document which answers a simple but critical societal question and that is what does change look like.

To this end the paper provides us with 20 detailed recommendations.

This particular Act is not one which is administered by our Department, but even so, Government as a whole must constantly review all pieces of legislation to see whether they are still fit for purpose in our society or whether they need to be repealed or reviewed.

Legislation must never be static, or cast in stone, the law should be dynamic and should adapt as society advances.

I would like to add one more recommendation and that is that all officials in government must undergo gender sensitivity training, and in particular become familiar with what LGBTIQ+ persons require and how best to serve them.

This must be a measurable performance target in any department's annual performance plan.

I have since informed the gender unit in the Department of Justice and Constitutional Development as well as the Department of Correctional Services that this must be implemented with dedication and speed.

To mind I think this should be, without a doubt, the starting point for all government departments particularly those in the front line of providing services, gender sensitivity and the sensitisation around the needs of LGBTIQ+ persons should be prioritised.

For us as a Department of Justice and Constitutional Development this speaks to deepening and entrenching the Constitution so that we, as the Constitution commits us to do, ***“improve the quality of life of all citizens and free the potential of each person”*** in a very real and tangible way.

If we are able to prioritise equality and dignity in total pursuit of fulfilling our Constitutional democracy, we will not have another Jade September experience.

I certainly think that the experience of Jade September in our facilities is deeply regrettable and an indication of just how untransformed our own institutions can be.

Programme Director,

It is my sincere hope this Policy Dialogue will chart a new path on our approach to fulfilling our constitutional obligations.

The Constitution must be a catalyst for transformation in all our communities. None should be spared from its promise.