

**Message of Support by the Deputy Minister of Justice and Constitutional Development,
the Hon JH Jeffery, MP,
at the National Conference on Trans and Gender Diversity Inclusion in Higher Education,
held at the Double Tree Hilton Hotel, Cape Town,
20 November 2021**

Programme Director,
Distinguished guests, friends

Whenever we speak of the human rights of children we instinctively start from the constitutional injunction that the best interests of a child are paramount in all matters concerning children.

Being a child automatically means being vulnerable – and being a transgender or intersex child or teenager all the more so.

Freedom, dignity and equality go to the very heart of our constitutional democracy. But many people are deprived of their human dignity and right to equality and are not free to be themselves, because of discrimination they face in their lives - they face discrimination on the basis of their sexual orientation, gender identity and expression and/or their sexual characteristics.

Transgender and intersex persons often struggle to access health care and face unfair discrimination in access to education, sport, employment and services.

Transgender, intersex and gender-nonconforming children may often face bullying, physical and emotional discrimination, violence, isolation and exclusion. This is not limited to the school, but can also be in their communities, in sport and in their own homes.

Our Constitution places an extremely high value on the rights of the child. The Constitutional Court case of *S v M* was about the sentencing of primary caregivers of young children and how the best interests of the child must be taken into consideration in such matters, so the case didn't deal specifically with the subject of transgender or intersex children – but the words expressed by Judge Albie Sachs remain highly relevant and universally applicable.

He said, and I quote -

“Individually and collectively all children have the right to express themselves as independent social beings, to have their own laughter as well as sorrow, to play, imagine and explore in their own way, to themselves get to understand their bodies, minds and emotions, and above all to learn as they grow how they should conduct themselves and make choices in the wide social and moral world of adulthood.

And foundational to the enjoyment of the right to childhood is the promotion of the right as far as possible to live in a secure and nurturing environment free from violence, fear, want and avoidable trauma.

No constitutional injunction can in and of itself isolate children from the shocks and perils of harsh family and neighbourhood environments.

What the law can do is create conditions to protect children from abuse and maximise opportunities for them to lead productive and happy lives.” (Close quote)

In the same way as Judge Sachs says, the law can create conditions to ensure that the rights of transgender, gender-nonconforming and intersex children are protected, promoted and affirmed.

South Africa follows a rights-based approach. This means that government has three levels of obligation - namely to respect, protect and fulfil rights.

To respect a right means refraining from interfering with the enjoyment of the right.

To protect a right means to prevent other parties from interfering with the enjoyment of rights.

And to fulfil a right means to take active steps to put in place laws, policies, institutions and procedures to enable people to enjoy their rights.

Two weeks ago we held a historic Policy Dialogue on the Rights of Transgender and Intersex persons. The Dialogue brought together the European Union, various South African government departments and leading civil society organisations – like Gender Dynamix and others - to review policy improvements for transgender and intersex persons.

The Policy Dialogue was extremely successful in bringing together a range of diverse stakeholders – from activists to policy makers and government officials – and many important issues around policy and legislation have been discussed.

After the two-day Dialogue, civil society met government to take forward the discussions on policy and law reform raised during the event.

Civil society welcomed government’s positive engagement during the Dialogue. Specifically, organisations noted government’s call for all civil servants to undergo gender sensitivity training.

Noting the Department of Home Affairs’ significant engagement in the discussions, the organisations expressed their support for the work being done in the development of the upcoming White Paper on Identity Management and civil society has stated its commitment to engage in the public participation process.

It is crucial that we maintain the momentum from this event in taking the recommendations from the Dialogue forward.

In this regard, a future conference dialogue is also being prepared to focus on health policies affecting transgender and intersex persons.

In the same vein, we felt it was extremely important for us to be here today to support this event so as to listen and to learn. And most importantly to see where we can assist, from the side of Government, in making the lives of transgender and intersex persons better.

To paraphrase the words of Judge Sachs, we must protect transgender, gender-nonconforming and intersex children from trauma and discrimination and maximise opportunities for them to lead safe, productive and happy lives.

The work being done here over the next two days will take us one step closer to achieving that.

I thank you.