

Full legal recognition for gender diverse persons - a Constitutional right

Justice and Constitutional Development Minister Ronald Lamola says legislation must begin to align with and give full legal recognition to those people whose gender identities do not conform to traditional perceptions of male and female and their roles.



Image source: Anete Lusina from [Pexels](#)

He was speaking at a two-day policy dialogue on intersex and transgender rights held in Pretoria on Thursday, 5 November 2021.

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

Lamola added that although the Sex Description and Sex Status Act 49 of 2003 is aimed at recognising the right to alter sex description on identity documents, the legislation still falls short of accounting for “gender diversity and therefore compromises and undermines the constitutional rights of trans and gender diverse persons”.

“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all pieces of legislation to see whether they are still fit for purpose in our society or whether they need to be repealed or reviewed.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,” he said.

Addressing one of South Africa’s earliest anti-discrimination laws, the Promotion of Equality and Prevention of Unfair Discrimination Act, Lamola said it is important to acknowledge that government has made significant strides to protect people from discrimination including on the grounds of sexual orientation or gender.

He highlighted that despite this and other efforts by government, a lack of “consciousness” has enabled “systemic inequalities and unfair discrimination [to] remain deeply embedded” in society.

He warned that this hampers the full realisation and implementation of South Africa’s constitution.

“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 a 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,” he said.

Lamola emphasised that although legislation goes a long way to promote anti-discrimination, more can be done at government’s policy execution level to address systemic discrimination against all members of the Lesbian Gay Bisexual Transgender Queer and Intersex (LGBTQI+) community.

“All officials in government must undergo gender sensitivity training, and in particular become familiar with what LGBTQI+ persons require and how best to serve them. This must be a measurable performance target in any department’s annual performance plan.

“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 LGBTQI+ persons should be prioritised,” Minister Lamola said.

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