

Intersex and transgender activism in South Africa

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Introduction

South Africa has come a long way concerning the legal treatment of trans* (in medical literature often categorised as transgenderism, transsexuality, gender dysphoria, or gender identity disorder) and intersexuality (also known as hermaphroditism or disorder of sex development). LGBTTIQ¹-activists consider the country to be, from a legal point of view, among the most progressive worldwide. Its laws are very advanced with regard to the legal emancipation of people encompassed under the acronym and with regard to the possibility to apply for legal adjustment of one's sex description without genital surgery (as described in detail in the section on legal discourses below). However it has to be pointed out that the achievement of formal equality did not result instantly into practical equality and the elimination of social differences. There is a massive discrepancy between legal protection, legal (non)practice and social acceptance of trans* and intersexed people. This discrepancy might in part² be due to the fact that it was not a movement accompanied by growing public pressure and awareness that lead to these legal changes, but that it was a matter of imposing social change from above through legal and constitutional rights (as described in the section on legal discourses below). South Africa is despite its progressive laws far from being a 'dreamland' for trans* and intersexed people. Instead they still face a vast array of obstacles, phobias, discrimination, and hate crimes. However the constitution and the progressive laws provide a legal basis from which they can fight for their rights.

¹ The acronym stands for Lesbian, Gay, Bisexual, Transsexual, Transgender, Intersex, and Queer. There have been added various other letters to include further groups at times, e.g.: A for asexual, autosexual, or allies; P for pansexual or polyamorous; Q for questioning, U for unsure; etc. Queer signifies here not only people other than gender normative heterosexual people, but stands for strategies, activism, and politics of people who experience discrimination on any ground (language, health, skin color, age, etc.). Similarly the acronym does not stand for a collective identity but for a common experience of domination resulting in activism.

² It is unlikely that the situation would be *very* different now, if the changes would have been induced by a mass movement. One just needs to have a look at the women's liberation mass movement and the inequalities women still face worldwide.

(...) people often say the constitution is just a piece of paper. It doesn't really mean anything because you know hmm, for many people things don't really change [pause] or haven't changed (...) in many ways and that is *true*. If you are black, and you are poor, and you're a woman who happens to be a lesbian, or a woman (...) whose gender identity is not neatly fitting into its stereotype then you are in big trouble. You are going to be marginalized, victimized, maybe raped. (...) but (...) I think the constitution [pause] does at least give you a bit of hope and (...) it is a tool (...) that one can use in the long term to give people respect for them – (...) to help yourself to get respect, to (...) make you feel that you also belong. (...) It's just that we must make sure that it becomes more *real* for more people. (Anonymous professor of law, 2007 Feb 5)³

Due to the intersectionality (the ways in which different social partitions are enmeshed; Crenshaw 1989) of e.g. sex, gender, 'race', class, sexual orientation, and able-bodiedness and the inherent "simultaneity of interlocking systems of oppression" (Erel et. al 2008: 274 referring to Combahee River Collective 1977), the experiences of individuals however diverge widely. This entails the need for a differentiated activism, taking into account the complexity and the social differentiation of the South African society.

Consequently this paper looks at the activism and struggles that have taken place since the end of Apartheid to improve the situation of intersexed and trans* people, while bearing in mind both the differences and similarities of the two groups. That these two interest groups are not at all homogenous in themselves can not be stressed enough, has already been alluded to above and will be addressed further in the following section on diversity. I then move on to have a look at the definition of the term movement and relate it to the diversity of people to be addressed. This section will be followed by a discussion of the South African legal situations of trans* and intersexed people from the beginnings of legislated Apartheid until today (1948-2008). Here I will describe how significant legal changes for trans* and intersexed people could be implemented at the end of Apartheid without a 'mass' movement. The time frame has been chosen due to the noteworthy legal alterations that have taken place during this period. I proceed by offering an overview on the activism that has taken place since the end of Apartheid to

³ Some interviewees requested on their informed consent forms to have their names or a pseudonym of their choice used in quotations, others preferred not to be identified. However not all of the interviews are transcribed fully yet, therefore only few interviewees had the possibility to check their transcripts and get their forms back to me. Interviewees who had not the chance to check their transcripts, will not be identified in this article.

improve the situation of trans* and intersexed people. This section looks also at the linkages, partnerships, and alliances of these activists groups with other local social movements groups that are not primarily concerned with the politics of gender identity and/or sex development.

Diversity

Even though trans* and intersexed people are often discussed as a single group, the complex intersectionality of e.g. class, religion, ethnicity, skin colour, income, and so on, places individuals at very different positions in life and lets them inhabit this 'single' category in very diverse ways.

Let me illustrate this briefly through a few examples. The economic divide (still very attached to the racialised divide) plays an important role concerning access to information and body alteration. People who come from disadvantaged economic backgrounds have difficulties getting in touch with NGOs (Non-Governmental Organisations), NPOs (Non-Profit Organisations), and other organisations catering for them. This is in part due to the fact that the internet seems to play a very important role. Most of my trans* interviewees who had access to the internet stated the importance of it:

While I was still working for [deleted] I got access to the internet. [...] I just typed in "men dressing as women". Because I had no idea what, what I was or anything, all I knew is, I had this thing that I felt feminine and I felt like I was a woman but... although the only way I could express it was in the way that I was dressing. So I put in the search and it came back with a whole lot of different things. (...) I started reading some of them and for the first time I started discovering that I'm not the only person in the world who's doing these kinds of things. I hadn't met anybody before that. (Caroline, 10 September 2007)

However, the internet is only available to a very limited extend to people living in South African townships, rural areas, or on the street. Transport to social gatherings is equally difficult for them in the evening hours (when most social gatherings take place) as there is no public transport to and from the townships at night.

Because [pause] the people that, the others that society will call coloureds or blacks; because there's most of them that don't have internet access and stuff or how to get to socials and stuff like that, that is why you don't really see them, (...) and the so called white community is (...) more visible, because they've got more monies as well. (Anonymous interviewee, 24 September 2007)

Access to biomedical care and body-altering products also depends to a great extent on financial resources. As a result of financial strain, general practitioners (GPs) seem to be seen far more often for hormones, for example, than endocrinologists. Some GPs were said to be more 'pragmatic', as they will do the blood tests and screenings when the client is able to pay (some even seem to work on credit). In contrast to the more expensive endocrinologists, GPs were said to cater for trans* people with regard to their individual budgets instead of insisting on the 'proper' biomedical order. Thus expensive blood screenings demanded by endocrinologists in order to be able to prescribe hormones or adjust the dosage of hormones can be avoided or postponed. Female identified persons who couldn't even afford a GP to gain access to hormones often resorted to birth control pills. Contraceptive pills are available free of charge at public sector family planning clinics. However they are only given to cis-women⁴ and not to trans*women. Thus the interviewees were dependent on cis-gendered women for help as long as they were not able to pass as cis-women themselves.

Theoretically, any medical care can also be obtained in the private sector. Persons who are willing and *able* to pay for the much more expensive private care can visit any private clinic in and outside the country. The few services offered in the public sector are however of crucial importance to the vast majority of people. Since income is still intimately connected with gender and skin colour, the situation is especially difficult for persons who did not grow up categorised as white males – but private care is much too expensive even for many who have been categorised in this way. Two of my interviewees (who grew up categorised as white males) and who were fortunate enough to be house owners sold their houses in order to finance their surgeries. These are but a few examples of how the economic divide, which is still closely aligned with the racialised divide, places individuals at very different positions in life.

⁴ The Latin prefix *cis* stands for "on the same side", whereas the prefix *trans* stands for "on the opposite side". "Cisgendered" or "cissexual" describes people whose gender identity matches their perinatally assigned sex.

Intersectionality is also important in the way it shapes the possibilities of living out one's identity and giving it a name. For example, Donham (2002), who did research on gay identity in South Africa, states that in the 1960s and 70s feminine urban black South African men were considered to be women (or people with variations of sex development) and their partners heterosexual men.

It was only through processes of glocalization and awareness of a global gay community that these lives were re-categorised – instead of woman and man they were understood to both be homosexual men. To illustrate this, Donham quotes some of these wo_men⁵ who reported that they became aware of a global gay community through their work in the hotel industry or through closer contact with white gay men. In those contexts, both partners were classified as male and thus as gay and not heterosexual: “gay identity meant literally a new gender and a new way of relating to his body (...) ‘(...) Before, I thought I was a woman. Now I think I’m a man’ (quoted in McLean and Ngcobo 1994, 168-9)” (Donham 2002, 420). Thus the enmeshment of different socially constructed divisions (the intersectionality) of sexual orientation on the one hand and ‘race’ on the other hand led during Apartheid to very different gender identities.

These changes in terminology and identity play an important role in activism as activists need to be able to name identities in a recognizable and identifiable way. There is no possibility of communication across the gaps created by different interlocking systems of oppression without a common language or the ability to translate one terminology into another.

I've also had that experience when I visited (...) a support group (...) in Mamelodi. (...) when I introduced myself and Gender DynamiX and the work we do, I kept on saying I work with transgendered people and I kept on seeing these blank stares. (...) [Thus] I said to the people ‘so, do you all know what transgender is?’ And then again blank stares, ‘no we don't know’. (...) So I say to them, I work with people who are known as sex changes. ‘Oh yes! We all know’ (...); so then the whole conversation lit up. (...) I realized that in many black communities (...) here in the 80's (...) it was known to speak of a transgender person as ‘a sex change’ (...) So the moment I reverted back to - which we don't actually accept (...) calling a person (...) a sex change - then they knew what I spoke about. So it is a clear thing for me that on the one hand you want to educate people, to use

⁵ I use the underscore character in this context to visualise the interstitial spaces between the binary categories of man and woman that become highly visible in this example. The underscore character has become more and more popular in German language as a step in the direction of gender-neutral language and an attempt to work against a linguistic consolidation of the gender-binary, and in order to make trans* and intersexed people visible, who were rendered invisible through a highly gendered language; cf. e.g. s_he 2003, Balzer et al. 2007 and Eder 2007.

better terminology that is more acceptable and not hurtful to people, but on the other hand: how do you close that gap to let them understand ‘well that what you know is exactly transgender. The most, better word right now’. There is a big gap; I have to get through to the people. (...) on the one hand we want to keep up in, in speed and terminology and things internationally, to be in the same league, but on the other hand we (...) don’t want to enforce terminology on people. (...) you have to make them understand: we are speaking here of the same thing. (Liesl Theron, 24 Feb 2007)

There is not only diversity in people that needs to be bridged. It also has to be noted that there exists a double standard concerning on the one hand the availability of and/or pressure for surgeries and on the other hand the discussion of surgeries when comparing the situation of intersexed people to that of trans* people. The availability of surgery – and the pressure to conduct the surgery as soon as possible – is much higher for intersexed people. Above all, the pressure for early surgery of intersexed infants seems to be especially high from parents who live in townships (Rebelo et al. 2008). This is also reflected in the number of hospitals carrying out these kinds of surgeries. Surgery on intersexed people is carried out in six state hospitals. However trans* people who were able to be classified as transsexual by a psychologist, in line with the World Professional Association for Transgender Health’s Standards of Care for Gender Identity Disorders (formerly known as the Harry Benjamin International Gender Dysphoria Association’s Standards of Care for Gender Identity Disorders, or simply as Standards of Care, SOC) will only be seen at two state hospitals. Ironically there are more hospitals allocated to be specialist centres for the surgical treatment of people who fight for the end of non-consensual and unnecessary genital surgery than for the surgical treatment of people who fight for their right to receive surgery. It seems pertinent to ask if this is due to the fact that the bodies of intersexed people question the sex/gender binary to a greater extent. Surgery on their bodies restores the order of the binary. Identities that question the sex/gender binary seem to be more difficult to accept by the South African health care system than physical bodies that question the sex/gender binary. The Department of Home Affairs’ violation of the current legal situation through its insistence on completed genital surgery for trans* people in order to alter their legal sex description seems to be accounted for by this phenomenon (see the chapter on legal discourses in this text or for a more thorough discussion Klein 2008).

Another case in point are the morally charged discourses around both kinds of surgery. When querying sex and gender in the medical sector, I came across tensions between surgeons who perform operations on trans* people and those who perform surgeries on intersexed people. Even though most surgeons expressed their ability to perform surgeries for both groups, most surgeons only do surgery on either intersexed or trans* people. Many expressed strong feelings against the other kind of surgeon and the surgery they carried out:

I mean I had [...] an adult male phone me and, you know he wanted a sex change operation. I mean he'd been counselled, he'd gone to the United Kingdom, he'd been to the United States, and he wanted it done in South Africa because he was a proud South African. He felt that the surgeons in South Africa could do it for him, you know, and uh, I mean you know we do the same operation, whether it's an intersex case or a transsexual case where the operation is the same but the philosophy behind the management of the patient is completely different. I declined to, to help him out; hmm, hmm because, you know surgery is not just the cutting, it's the overall care of the patient. (Anonymous surgeon, 27 November 2007)

He also pointed out to the different perception of transsexuality and intersexuality by parents, emphasizing that intersexuality is perceived as a disease while implying that transsexuality is perceived differently.

Very few parents would consent to transsexual surgery on their children uh, for, for reasons of transsexuality. Whereas parents will see intersex as a *disease* state, and they therefore will give consent, and I think that's an important difference. (Anonymous surgeon, 27 November 2007, emphasis is interviewees)

Only a day later a surgeon performing surgery on trans* people repeatedly told me that he strongly opposes surgery on intersexed children. Both surgeons questioned the ethics behind the other kind of surgery – the surgery that they did not perform.

Besides the general questioning of the ethics behind the respective surgeries, I became aware of a double standard applied by some surgeons to the minimum age of their patients that they considered necessary in order to give informed consent to surgery. One surgeon for intersexed people was convinced that a 14 year old intersexed youth is able to give informed consent to surgery:

This is a little girl who was uh, uh a true hermaphrodite. [Showing surgical pictures] And she had grown up to (...) an age where she now wanted to be sexually active. She was (...) bisexual, but she wanted to have a normal female phenotype. So she came to us after puberty and said, “These are what I want done”. Okay, and we, uh....

Th. K.: How old was she?

She was about fourteen at this stage. And we then uh, operated on her (...) Hmm, and (...) converted her to a normal female appearance. (...) Now that’s the perfect situation. There you’ve got a person who has declared exactly what they want. They’re of an age where they understand the implications of the operation, because [if] you take a tiny baby (...) that child is not [giving] informed consent. (Anonymous surgeon, 27 November 2007)

However, the same surgeon questioned the ability to give informed consent in a 16 year old trans* youth:

No, I mean whether – I don’t know about the ethics of, of medical practitioners assisting transgender, transsexual processes in people who are under-age. I worry about the ethics of that. I mean: aren’t you concerned about the ethics of 16 year olds? I mean because the brain in a 16 year old is a very, you know here today, gone tomorrow phenomenon. So I, I don’t know, I don’t think that a 16 year old has the capacity to take that sort of decision. (Anonymous surgeon, 27 November 2007)

All the surgeons I interviewed who perform surgery on intersexed infants stated however that they have taken to wait longer with surgery. This is a rather recent development that started around 2003/04 and that was initiated through the pressure from international groups such as ISNA (Intersex Society of North America). Then again one interviewee pointed out that as the pressure from parents is immense, however, surgery will in most cases take place around 3-6 months after the child is presented at the hospital. It is especially remarkable, bearing in mind the waiting lists⁶ for surgeries for trans* people, that the surgeries for intersexed people can be performed so quickly.

The above given examples of widely diverging individual and group experiences (due to intersectionality - the ways in which different social partitions as e.g. sex, gender, ‘race’, and class are enmeshed - but also as a result of medical and social double standards and divergent

⁶ Only approximately six people with variations of gender identity are able to receive reassignment surgeries per year in the public health sector (for more detailed information see Klein 2008).

morally charged discourses) elucidate the need for a differentiated activism. In the following section I look at the definition of the term movement and relate it to the diversity of people to be addressed.

Intersex and transgender activism in South Africa: Are these movements?

As we can look back on more than a century of research on social movements, there exists an extended body of literature on social movements without a universally accepted definition of the term. First attempts to define the term reach back to German Sociologist Lorenz von Stein and his book "Geschichte der sozialen Bewegung in Frankreich von 1789 bis auf unsere Tage"⁷ (1850). Most of the more recent definitions agree however that a social movement consists of a large number of people with some form of collective identity, common interests, and/or shared beliefs who are organized to bring about social change and achieve certain goals. The actors in these definitions vary widely from "formally organized groups" (Goldberg 1991) to "informal networks" (Della Porta and Diani 1999) to the even more loosely definitions of Tilly and Tarrow who see movements as "sustained challenges to powerholders" (Tilly, 1995: 369) and "collective challenges" (Tarrow 1998: 4). Not only Tilly in his above cited work but also Scott emphasizes that social movements use mass mobilization to achieve their goals.

Social movements are distinguished from other collective actors, such as political parties or pressure groups, in that they have *mass mobilisation*, or the *threat of mobilisation*, as their prime source of social sanction, and hence, of power. (Scott 1990: 7, emphasis is mine)

Here lies the crucial point: Neither the success for formal protection was achieved through a 'mass' movement nor does the ongoing activism reflect one. With regard to the high diversity within the communities of trans* and intersexed people and with regard to very different kinds of discrimination that evolve out of the intersectionality of various socially and culturally

⁷ A translation by Kaethe Mengelberg "The History of the Social Movement in France, 1789-1850" was published in 1964.

constructed categories and the interlocking systems of oppression, it is hardly possible to mobilize masses. Instead activism relied and still relies very much on the work of a few dedicated individuals and organizations as I will show in the section on activism. However this activism is well on its way to create awareness, visibility and maybe therefore even ‘masses’ that didn’t exist before as a unity.

The following example might illuminate the importance of visibility in order to create awareness in the general population – not only for the problems faced by and needs of a certain population – but first of all of its very *existence*. I vividly recall a student asking me during a sexuality and social control class at the University of the Western Cape where all the gay people came from so suddenly since the end of Apartheid. She commented that they didn’t exist during Apartheid and equated invisibility with non-existence. It is hardly possible to have a social movement, if the people who could become allies are invisible and ‘non-existent’ to each other and to the rest of the world. The importance of visibility for South Africa’s emerging transgender movement is also stated by Liesl Theron, executive director of Gender DynmiX:

(...) for sure the visibility will change some peoples’ minds. (...) So just (...) by the visibility we [Gender DynamiX] create out there it already will change some things. I think even the individuals – in their households or families or circles where they move – have a little bit more confidence to stand up, to start speaking out, to be visible. (...) you can’t really speak here of a transgender movement, I mean a movement is something much more organized and bigger and stronger, but (...) if you can use that word - because I don’t know what other word to use – then I would say, there’s a slowly emerging transgender movement that happens in South Africa right now. (Liesl Theron, 24 Feb 2007)

Even though it is inappropriate to speak of a mass movement, the growing visibility and activism might be hinting at the birth of a new movement of trans* people and – to a still lesser extend – movement of intersexed people as well. Tilly’s (2004) three major elements of a social movement (1. campaigns: a sustained effort making claims on authorities, 2. repertoire: political action in the form of e.g. public meetings, demonstrations, statements to and in public media, creation of associations, etc. and 3. WUNC displays: participants’ concerted public representation of **worthiness**, **unity**, **numbers**, and **commitment**) are already met in South Africa (as described in the section on activism below). Maybe it would be more appropriate for the South African case to

use Tarrow and Tilly's more recent concept of "contentious politics" which is not defined by mass participation or agitation, but as

"(...) episodic rather than continuous, occurs in public, involves interaction between makers of claims and others, is recognized by those others as bearing on their interests, and brings in government as mediator, target, or claimant. (...) Disaggregating movements from within the more general term 'contentious politics' will help to focus on these differences, on the conditions that give rise to movements, and to the transitions between movements and other forms of contention." (Tarrow and Tilly 2007: 437f.)

Thus the term facilitates the analysis of South African activism without the need to rely on mass participation or movements. In consequence it caters in a better way to South Africa's situation where communication and translation might become so difficult between various groups that they are sometimes 'invisible' to each other as allies. The need for translations complicates a possible unity.

I would like to give a further example in addition to the already given illustration of 'translation troubles' above. I have witnessed many discussions as to who is a 'true transsexual' person and who is not. Most often the definition entailed surgery and hormones. One of my interview partners – she is a (trans)woman who did not receive any surgery – for example stated that her feelings were hurt by a post-operative (trans)woman, when she was told, that two pre- or non-op (trans)women in love were "just gay men". This was especially hurtful to her as her economic situation would never allow for surgery. She also will never be able to access surgery in the public health sector as she will have to meet certain requirements (no history of sex work or drug abuse, proof of employment and a stable relationship) that she can not meet. At a different occasion I observed an unpleasant episode at a Transgender Retreat where one participant was called *moffie* by another partaker. Unfortunately the term may connote very different things, from an exceedingly derogative and hurtful word, to an effeminate gay man, to a drag queen, on to a word for transgender in – during Apartheid times as 'coloured' labelled – townships. "Township drag relies on transgenderism, as drag queens articulate gender expressions that match, instead of contradicting, their genders." (Swarr 2004: 86). The individual called *moffie* translated it into a

derogative term for “effeminate gay man” and felt deeply insulted as she identifies as female. The term itself allows however also for a different reading as indicated by the quote above.

Let me go on now to a discussion of the South African juridical situation before I outline the specific forms of activism, the linkages, partnerships, and alliances as well as the networks of this activism which transcends national boundaries.

Legal discourses

In 1996 South Africa was the first, and is still the only, country worldwide to enshrine the rights of trans* persons in its Constitution. Thus it is the only country that – at least nominally – protects trans* people to the full extent.

As already stated above the success for formal protection was not achieved through a local ‘mass’ movement *against* institutions but began *within* institutions through the Technical Committee responsible for drafting the chapter on the protection of individual rights for the Interim Constitution. The following quote relates how it came about “a clause which was fairly thorough in outlawing the grounds upon which discrimination would not be tolerated.” (Lind 2005: 342):

Hmm, well my *flippant* answer is to say that it is because people don’t know and didn’t know what they were doing when they passed the law [chuckles] and (...) there’s a small bit of truth in that – I’m saying that as a *joke!* – but there is a little bit of truth in that. People didn’t think (...) the consequences fully through. What does it mean, if you say there can be no discrimination on the basis of sexual orientation, sex, gender, whatever? If you follow that logically through, it has more far-reaching consequences than people *thought*. (...) during the negotiating period when people were discussing what will be in the constitution or not [pause] (...) they (...) wanted really only to have a general statement to say ‘no discrimination’ or everybody is equal before the law. Then the women’s lobby said ‘uh hmm, we don’t trust you, we want a specific provision that says no discrimination on race and sex and gender’. And then that was accepted, and then other lobby groups started coming. (...) they made a *very powerful* argument that if you are going to oppose this you are really just (...) supporting another kind of discrimination which we were trying to get away from. (Anonymous professor of law, 2007 Feb 5, emphasis is interviewees)

It is interesting to note that the current rights of trans* and intersexed people were not secured simultaneously. The rights of intersexed people were only explicitly secured in January 2006

through an amendment of section 1 of Act 4 of 2000 (the PEPUDA also known as Equality Act: Promotion of Equality and Prevention of Unfair Discrimination Act). After the successful intervention of activist Sally Gross (founder of ISSA: Intersex South Africa) a definition of intersex was inserted through this amendment. Most importantly however it was stated that the term 'sex' in the Equality Clause includes intersex. It is, in fact, only from that time on that the Constitution has afforded guaranteed protection in law to intersexed people. It has to be noted, however, that this protection is still in its initial stages of implementation. The vulnerability of people outside the binary-cis-gendered/sexed system remains very high. Even though intersexed people are protected through the Constitution – as the term sex in the Equality Clause now includes intersex by statutory stipulation – no certificates or legal documents are issued stating that intersex is the legal sex of a person.

The following legal history similarly reflects the neglect to cater specifically to the rights of intersexed persons and reveals a rather one-dimensional focus on trans* people. The Birth and Deaths Registration Act of 1963 allowed trans* persons to apply to have their sex status changed in the birth register after sex reassignment surgery. This was changed in 1992 by the introduction of section 33(3) into The Birth and Deaths Registration Act, which stated that only persons who had commenced sex reassignment prior to 1992 could apply. Accordingly only ongoing transitions could be finalised but *none could be initiated*. As a consequence, nobody could legally start transitioning after 1992 to have the sex status adjusted in their documents. This decision was apparently based on a court case from 1976 “where the court held that a person’s sex could not be medically changed” (SAHRC 2003, 2).

The central question in the case was whether it was possible for a person to change their sex (as defined for the purposes of marriage). In deciding that it was not, the court employed the so-called “Ormrod Test”, from the English Case of *Corbett v Corbett* (1971). This amounts to a purely biological and genetic definition of sex. It looks to “chromosomal, gonadal and genital tests” and if all three are congruent determine(s) the sex for the purpose of marriage accordingly and ignores any operative intervention. In other words, a person’s sex for legal purposes is a wholly biological question and is fixed at birth. (SAHRC 2003, 2)

Thus the legal understanding of sex which had previously included psychological and social aspects was reduced to chromosomal, gonadal and genital differentiation at the time of birth.

What actually led to this decision is unclear. The explanation given above seems rather unsatisfying as there is a gap of 18 years between the court case and the amendment in The Birth and Death Registration Act. Moreover this modification was made after there had been quite a peak of sex reassignment surgeries and newly issued birth certificates in the 1980s – and sex reassignment surgeries had already been carried out regularly previously. According to the South African Law Commission, 150 people with variations of gender identity were treated between 1969 and 1984 at Groote Schuur Hospital in Cape Town alone (South African Law Commission 1995, 8). Crichton (1993, 347) states that he carried out 58 surgeries at the University of Natal Hospital in Durban between 1969 and 1993. (By way of comparison, Conway [2002] gives the following estimates of MtF sex reassignment surgery operations among US residents: 1960s: 1,000; 1970s: 6,000-7,000; 1980s: 9,000-12,000; 1990s: 14,000-20,000.)

There had also been a huge amount of *forced* surgeries in the South African military between 1971 and 1989. According to journalist Ana Simo:

(...) former apartheid army surgeons estimate that as many as 900 *forced* “sexual reassignment” operations may have been performed between 1971 and 1989 at military hospitals, as part of a top-secret program to root out homosexuality from the service. (Simo 2000, emphasis is mine)

The same numbers are stated by forensic psychiatrist Robert Kaplan (2004, 1415-1416) and journalist Paul Kirk (Kirk 2000). However the universal conscription of white males into the military (1967-1991) ended in the year before the amendment of the Act went through. Thus the end of universal conscription of white men (along with the resulting affiliated changes in the military) and the end of reassignment surgery at the closing stages of the Apartheid era might be linked. In order to understand the possible relation between the two events, one has to be aware of the above mentioned ‘rehabilitation’ programmes in the military that aimed to ‘cure’ homosexual personnel and within which the forced surgeries took place. These atrocious ‘treatments’ (without consent) and human rights abuses – including electric shock aversion therapy, psychiatric drug treatment, chemical castrations and sex reassignment surgery – seem to have been abandoned in the same time period (for a more thorough discussion, see Kaplan 2004,

Kirk 2000, Van Zyl et al. 1999). Whether (and to what extent) there is a connection between the simultaneous ending of the experimental sex reassignment surgeries with the ending of universal conscription for white males into the military and the introduction of section 33(3) into The Birth and Deaths Registration Act still needs to be investigated.

Unfortunately most of the people who transitioned forcibly or voluntarily in the 1980s and earlier are neither available as historical witnesses nor as role models for the younger generations of trans* people (which was regretted by several interviewees) as they were advised to leave the country or at least their home town after surgery, to break all ties with family and friends, and to live in stealth (Kaplan 2004:1415). In line with the government's interest at the time to make their transition invisible, all their newly issued documents were waiting for them when they left the hospital in order to be able to start their new life.

(...) the more I speak on transgender people who transitioned hmm, long ago – I'm speaking here of in the 80's – (...) it was like they heydays in South Africa for transitioning. There were so many cases; it was handled completely different than now. Hmm, in that case the moment you came out of the hospital - and that I've heard from somebody who actually had her surgery in I think '85; the moment she came out of hospital her ID documents were waiting for her, her passport was waiting for her. And the way they were hmm, kind of advised by psychologists or the person, a therapist who walked them through the process, was to actually disappear. That's I think why the ID documents and passports were ready with the new gender name change, because they were advised to move. To break ties with all people and if possible, even move to another country. (...) so in South Africa you don't have many role models or older transgender people who can give advice to new, young emerging ones, because they were told to disappear. (Liesl Theron, 24 Feb 2007)

What seems quite interesting with regard to the possible birth of a transgender movement is that in the 1980's during the 'heydays of transitioning', a time were people were able to transition in far greater numbers⁸ than today, these very people were rendered invisible - including their multitude. Breaking all ties with family and friends, living in stealth, or leaving the country makes it impossible to form networks or even to be simply aware of other people in a similar situation, with similar identities, and needs. To form anything similar to a movement becomes impossible under these circumstances.

⁸ About six surgeries are carried out every year in the South Africa's public health sector (for a more detailed discussion see Klein 2008).

As already stated above, even though sex, gender, and sexual orientation were included in the Equality Clause, this mere inclusion was not sufficient to enshrine the rights of trans* persons. It only recently became possible to apply for the legal adjustment of one's sex description, due to The Alteration of Sex Description and Sex Status Act, No. 49 of 2003 (which came into effect in 2004). Owing solely to written and oral submission of some groups and activists, improvements and corrections could be inserted into The preliminary Alteration of Sex Description and Sex Status Bill compiled by the South African Law Commission, so that the Act now conforms with the Constitution. These were the Cape Town Transsexual/Transgender Support Group around activists like Estian Smit and Simone Heradien, and activist Sally Gross on behalf of intersexed people. Further input was given by the Human Rights Commission and the Lesbian and Gay Equality Project.

What happens is that they put out an advert inviting submissions. And I then got in touch with the Secretary of the Portfolio Committee - a public servant. (...) They'll set dates; the Chairperson of the Committee might actually shift the dates. And you know, people will be knocked kind of off the agenda and so on. So you really actually have to be alert and in touch with the Secretary of the Committee and to fight, you know, to be prepared to fight every inch of the way. Your right actually is to (...) be heard. But if you are able to do that, well, I mean people do to a degree listen. (Anonymous activist, 06 May 2008)

It is at this point in time that Tilly's (2004) three major elements of a social movement become visible. The activists inputs to The Alteration of Sex Description and Sex Status Act were an effort in making claims on authorities (1. campaigns) which was accompanied by statements to and in public media, public meetings, and the creation of associations like the Cape Town Transsexual/Transgender Support Group (2. repertoire) as well as a concerted public representation of worthiness, unity, numbers, and commitment (3. WUNC display). The representation of numbers was not effected through the appearance of large numbers of activists at the hearings but through the figures given in the submissions (see e.g. Gross 2004: 3).

On the grounds of the aforementioned intervention came another important legal change with The Alteration of Sex Description and Sex Status Act: genital surgery was no longer required for the alteration of one's sex description. However this is not legal practice and the Department of

Home Affairs – where the appeals for Sex Description Application have to be handed in – still only issues documents after completed genital surgery and demands letters from the surgeon who carried it out. Thus it violates The Alteration of Sex Description and Sex Status Act which must lead sooner or later to a court case if the Department does not abandon its current practice.

South Africa is, however, not the only country dealing with ambivalent agendas. It will be interesting to observe how perceptions of body, sex and gender will be debated in different social spaces as more and more countries pass or discuss laws regarding the definition of a person's legal sex as not relying on the look of that person's genitalia. Sharpe (2007) has dealt with a similar situation in Great Britain where the Gender Recognition Act of 2004 does not require surgery either, but where

(...) it is clearly the expectation of the government that surgery will occur. [...] in the case of an applicant who has not undertaken surgery, the possibility remains [...] that this fact may hinder a diagnosis of gender dysphoria [which is essential for the legal adjustment of one's sex]. (Sharpe 2007, 71-72).

Currently the UK and Spain are still the only European countries where genital surgery is not a prerequisite for a new birth certificate in the lived gender. But many NGOs – e.g. TransGender Europe, TransGender Netzwerk (or Network) Berlin (Germany), Crisalide-AzioneTrans (Italy), and Grupo de Identidad de Genero y Transsexualidad (Spain) – are fighting for the worldwide enforcement of human rights concerning the bodily and psychological self-determination and autonomy of trans* and intersexed people. They question among other things the prerequisite of permanent sterility or surgery in order to change the sex-entry in identity papers and on birth certificates to obtain full legal recognition.

Activism and (Inter)national Alliances

There are several organizations that cater *among other things* to the needs of trans* people (e.g. the Triangle project in Cape Town and OUT LGBT Well Being in Pretoria)⁹ but to my

⁹ Both organizations work towards eradicating discrimination against and within the LGBT community and have a focus on health.

knowledge none that provide additionally for intersexed people. However there are two organizations that offer services exclusively to intersexed and trans* people. These are ISSA (Intersex South Africa) and Gender DynamiX.

ISSA was created in 2008 out of the formerly Intersex Society of South Africa (ISOSA), which was founded in 2000 by local activists and their allies. The organisation offers information on intersexuality, workshops, support groups for intersexed people and their parents, a support phone line and has been responsible for influencing and advocating policy changes in national legislation as outlined above. Besides its dedication to raising awareness, combat discrimination and supporting intersexed South Africans, it is advocating the end of non-consensual and unnecessary genital surgery.

(...) a part of it is advocacy; a part of it has to be kind of working at...you know...the legal issues; a part of it needs to be kind of networking and educating potential educators. So I mean, targeting medical professionals and trying to influence medical curricula and ...uhm...targeting kind of clergy people, targeting teachers etc.. Also trying to get intersex people in South Africa out of their closets you know, to create safe spaces. So a part of it is actually to create a kind of space for (...) support groups. (Anonymous activist, 06 May 2008)

ISSA provides the space “for the development of an intersexed voice in Southern Africa” and thus for the visibility of intersexed people as a “natural variant and an important part of human diversity” (ISSA 2008). One interviewee stated that in view of a medical paradigm that pathologizes and thus discourages people from seeking contacts with others, the visibility of equals – necessary in order to form a movement – is no longer given.

(...) one of the challenges (...) is, (...) the dominant paradigm, [which] is (...) actively discourage[ing] people from seeking contact with others. And I mean, this is something that I have encountered over a couple of times. Say a psychologist comes to consult me about this... uhm... one person; has had a client who is intersex who is just not prepared under any circumstances to come out to make contact with others ...There is this kind of terrible fear! (...) On the part of the intersex person. You know, it is almost the buying into the pathologization (...) [of] the dominant medical paradigm. (...) [Intersexuality] is quite clearly something designed to protect social categories, social concepts. I mean, how can you have these people with ambiguous bodies just wandering around.....obviously you can't ...(...) You need to make it naturally by taking a scoop out of it and mutilating it, in order to match it up. (Anonymous activist, 06 May 2008)

Similar to the situation of trans* people in the 1980s, stealth and invisibility are regarded in the above citation as encouraged through medicine. The distinction lies here in the fact, that in the 1980s people were actively advised by medical personnel to become invisible whereas in the above quotation, the mediation of the message is more ‘subtly’ embedded in the binary-cis-gendered/sexed medical paradigm.

Besides ISSA’s founder Sally Gross, the organisation is managed by four people with very divergent backgrounds that confirm ISSA’s impetus on diversity. This diversity enabled the organisation additionally to form partnerships with other social movements groups or organisations that are not primarily concerned with the politics of intersexed people, as many of the activists are also engaged in other groups.

Sally Gross for example has knit close ties and linkages to divergent religious organizations (e.g. Quaker, Jewish, and Buddhist). This is due to her background, interest in and profound knowledge of religions. She is a former exiled anti-apartheid activist, classified male at birth and reclassified as female at the age of 40 after having sought medical advice, when it became evident that she was intersexed. Having served as a Catholic priest at the time and due to her frankness about the discovery that she is intersexed, a Papal Rescript pushed her out of her workplace, as female priests are not an option in the Catholic Church.

However there are many more connections as for example to Engender, an organization “focused on changing patterns of violence (including gender-based violence) and inequality in South African society and the necessary transformation from victimhood to agency” (Engender 2008). The NGO was registered in 2003 and acts since as an administrative and financial sponsor for

ISSA. The close ties between the organizations are also expressed through the membership of four of ISSA’s members at Engender.

Additionally ISSA works together with:

(...) the Childrens’ Rights people. And there are some powerful activists in that field, that we need to work closely with. In addition to the queer sector and with the gender, gender women sector, as well. Those are the key alliances we need to do. (Anonymous activist, 06 May 2008)

Furthermore the internet is used as a tool to entertain international connections. Links to ISSA can be found on ISNA (Intersex Society of North America)¹⁰ and IGI (Intersex Support Group International)¹¹. ISSA itself offers links to four South African Organisations and 13 international Organisations.

The foundation of **Gender DynamiX** is very much linked to personal experiences of an activist (as was the foundation of ISSA). Executive Director Liesl Theron explains:

(...) the history of Gender DynamiX is quite a part of my own life story as well. Hmm, in the middle (...) 90's I went out with a transgender person, and then (...) in the middle of 2000 again. And the second time I went out with a transgender person I realised how little information, and (...) services for transgender people [were available]; including the LGBT organizations, hmm, or also medical practitioners or wherever you ask for advice, you couldn't just really find the information you needed. (...) Then I realised if one person struggled to get information then everyone must struggle to get that information. So it was important that somebody kept having that information at a central place, because (...) [often when] they [have] finished transitioning, (...) they move on with their life and disappear, but so, also with them goes that information. That also disappears. Hmm, so that was one of the big reasons why I started it, yeah. (Liesl Theron, 23 Feb 2007)

International networking facilitated the creational process of Gender DynamiX very much as there was very little to no information available in South Africa.

I just couldn't find sufficient and enough information here in South Africa (...) on various levels regarding transgender issues per se, but also (...) how to (...) [run] support groups or social groups (...) and well it happens to be in such a way that me and my partner of that time, wanted to go on a holiday somewhere of an international destination. Neither one of us ever was outside this country, so we decided then to go to the UK. (...) I got a lot of information! (...) [After the return] I started working in a more structured way. (...) I started researching a lot more things on the internet and,

and look up things and all of that. And then hmm, the website [of Gender DynamiX] was designed and ready by about August of 2005. (...) The final registration of Gender DynamiX as (...) an NGO (...) came through in September 2006. (Liesl Theron, 23 Feb 2007)

¹⁰ Founded in 1993 in an effort to advocate for patients and families who felt they had been harmed by their experiences with the health care system, ISNA closed when Accord Alliance was established in March 2008. Accord Alliance is a non-profit organization (originally sponsored by ISNA) charged "to promote comprehensive and integrated approaches to care that enhance the health and well-being of people and families affected by disorders of sex development" (<http://www.accordalliance.org/>, 22 Nov 2008).

¹¹ IGI provides support from a Christian perspective.

Since then Liesl Theron has created strong international ties serving e.g. as a board member of Pan Africa ILGA¹² (International Lesbian and Gay Association) and being selected by the African Regional Sexuality Resource Centre¹³ (ARSRC) based in Lagos, Nigeria for the 4th annual Sexuality Leadership Development Fellowship in July 2007 which included a post fellowship research. Besides the international partnerships, she entertains strong local linkages and alliances to the Joint Working Group (JWG)¹⁴, Good Hope Metropolitan Community Church (GHMCC) and is the Expert on Health24's Transgender Forum.

At present Gendery DynamiX has a staff of four (executive director, administration officer, outreach officer, and researcher who is a registrar surgeon from Tanzania) as well as a management committee that consists of 10 people. First languages spoken within the team are Afrikaans, English, German, isiXhosa, Luganda, Sepedi, Swahili, and Zulu. The diversity is also represented by the formal training people have received (from no to very little training up to two persons with doctoral degrees) and very divergent socio-economic status as is exemplified in the quote below.

Hmm, for the past 10 years she's [member of the management committee] without a work (...) many people ask me why I selected her to be on the board, she's not having internet access, she's not even having no technology or nothing and that's exactly my point. Hmm, I think it will be much easier if we are 10 people with the best internet and we can just da, da, da'; you can easily skip and oversee things that other people don't have. So for me that was part of having a very diverse group. Whenever the minutes are printed out, e-mailed out to everyone I have to print her minutes, put it in an envelope and mail it to her.(...) but for me it was very important to include that type of diversity in my board level as well, otherwise it's very easy to oversee what is many of South African people's stumbling block. Why they can't transition, or why they don't have information, or why they don't know things what actually can be their rights. (...) She also doesn't have transport, she lives very far off. (...) I think: no! How will we ever realise what is hmm, demographically and on social ways and financial ways, what is the influence of that in South Africa and with hmm,

mobilisation and getting information out there if we have it so convenient? Everyone jump in their car and just arrive for the meeting. So it's important for me to have a person like her on that board. (Liesl Theron 23 Feb 2007)

¹² Founded in 1978, ILGA has more than 600 member organisations today. Every continent and over 90 countries are represented.

¹³ The ARSRC, established in 2003, is part of a Ford Foundation five-year grant-making initiative, "Global Dialogue of Sexual Health and Well Being". The goal of the ARSRC is to promote more informed dialogue on human sexuality and to contribute to positive changes in the emerging field of sexuality in Africa, by creating mechanisms for learning at the regional level.

¹⁴ JWG is a national network of LGBTI-focused organisations in South Africa founded in 2006.

The strength of Gender DynamiX's team arises not only out of its diversity but also out of the numerous ties and the longstanding working experiences single members have with other (social movement) organisations within South Africa. Most of them have served many years – and are still serving – on the committees, boards or as staff for organizations such as African Regional Sexuality Resource Centre, African Solidarity (a Pan African listserv of LGBTI activists and allies), Coalition of African Lesbians (CAL), the East and Horn of Africa Human Rights Defenders Network (EHAHRDN), Engender, Freedom and Roam Uganda (FARUG), Hirschfeld-Eddy Foundation, the International Gay and Lesbian Human Rights Commission (IGLHRC), People Opposing Women Abuse (POWA), South African AIDS Consortium, South African Medical Research Council, Sexual Minorities Uganda (SMUG), Sex Worker Education and Advocacy Taskforce (SWEAT), and Women's Net. Even though it might be difficult to speak explicitly of a movement of trans* people in South Africa, this impressive list (which can easily be further expanded) demonstrates that trans* activists are in any case involved in a broader social movement addressing gender and sexuality.

Equally impressive (and incomplete) is the list of Gender Dynamix's activities in the short period of its existence since 2006. Besides the everyday services of providing information and service to trans* people, they have organized digital story telling and oral history workshops, conducted research on the (un)accessibility of shelters for trans* and intersexed persons, attended conferences and have given numerous guest lectures (e.g. at the African Gender Institute at the University of Cape Town, the School of Human and Community Development of WITS University, and the South African Council of Applied Psychology) and radio interviews, published articles and press releases in South Africa and Namibia, supported the Out in Africa Film Festival through educational panels after the screening of films featuring trans* and intersexed people, provided information at numerous occasions (e.g. the SEXPO and the cape town pride), organised retreats for trans* people and gender diversity seminars, worked with the staff of several companies that had an employee who transitioned and helped the companies to revise all their policies into a non-discriminatory language.

Let me come back to Tilly's (2004) three major elements of a movement. Both ISSA and Gender DynamiX undertake efforts in making claims on authorities (campaigns). I have mentioned the examples of inputs to The Alteration of Sex Description and Sex Status Act and the revision of company policies. When it comes to repertoire I would just like to point to the impressive lists above. What I have not mentioned yet however are ISSA's successes in reaching out through statements to and in public media. Besides statements in the written press, two of ISSA's members had for instance important roles in the discussion of the ethics of having been imposed to non-consented genital reconstruction in the documentary program *The 3rd Sex*, featured for the first time in November 2003 on South Africa's television channel SABC 3. Also, both organizations' media statements should be regarded as convincing achievements in the WUNC display, especially but not exclusively with regard to worthiness and commitment.

As pointed out at the beginning of this paper, I prefer however to use Tarrow and Tilly's (2007) more recent concept of "contentious politics". On the one hand Tilly's (2004) three major elements of a social movement are met by both ISSA and GenderDynamiX but on the other hand it is impossible to speak of a social movement when speaking actually of dedicated activists organized in two organizations. Maybe one can speak of the birth of a South African movement of trans* and intersexed people. Another possibility would be to see them as part of a much broader social movement addressing gender and sexuality, as suggested with regard to the activists and groups' involvement with other organizations.

Conclusion

Let me summarise and recapitulate the main points. In this article, I have stressed that due to the intersectionality of a variety of categories, the experiences of individuals and groups diverge widely. In the following I have introduced the term movement and queried, if it is justified to speak of such in the South African context. I have suggested to operate in the South African case with Tarrow and Tilly's more recent concept of "contentious politics" as the term facilitates the analysis of activism without the need to rely on mass participation or mass agitation. Subsequently I have outlined the legal situation of trans* and intersexed people from the

beginnings of legislated Apartheid until today (1948-2008). Here I have pointed out that these legal structures have not been the result of mass movements protest, but the intense work of some activists. I have also related the fact that the advised as well as the voluntary ‘invisibility’ of trans* and intersexed people led to a historically delayed opportunity of building up interest groups and consequently, a movement to enhance their rights. Next I have provided an overview on the work and alliances of the two most important South African groups with regard to the improvement of the situations of trans* and intersexed people. Both Gender DynamiX and ISSA take into account the complexity and the social differentiation of the South African society. This is firstly reflected in the diversity of their staff and members and secondly through the fact that both organisations reach out to and try to cater for disadvantaged populations through the position of outreach officers. Needless to be said, that the task of translating and brokering information to and between very diverse populations is not an easy task to accomplish.

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