**HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM****ACESSO À SAÚDE POR PESSOAS TRANS NA ÁFRICA DO SUL: DISCRIMINAÇÃO DE GÊNERO, VIOLAÇÕES DE DIREITOS HUMANOS E O PAPEL DO SISTEMA AFRICANO DE DIREITOS HUMANOS****ACCESO A LA ATENCIÓN MÉDICA DE PERSONAS TRANS EN SUDÁFRICA: DISCRIMINACIÓN BASADA EN GÉNERO, VIOLACIONES DE DERECHOS HUMANOS Y EL PAPEL DEL SISTEMA AFRICANO DE DERECHOS HUMANOS**

Erick da Luz Scherf¹, Maria de Lourdes Alves Lima Zanatta², Marcos Vinicius Viana da Silva³, Jose Everton da Silva⁴

e1425

<https://doi.org/10.47820/jht.v1i4.25>

RECEIVED: 10/28/2022

APPROVED: 11/28/2022

PUBLISHED: 12/04/2022

ABSTRACT

LGBTQIA people, all around the world, experience violence, discrimination, and rights violations almost daily. In the field of human rights and healthcare more specifically, trans people have unique health risks and they face further rights violations, public shaming, and institutional violence when trying to navigate through an essentially cisgender healthcare system. On that account, this research aims to explore transgender persons' right to access health care (or lack thereof) in South Africa and possible remedies in the African human rights system. The methodology employed consists of a brief review of literature, a qualitative design based on multiple sources, and theoretical reasoning embedded in the larger framework of human rights, more specifically a human rights-based approach to health care. The goal is to employ a somewhat innovative human rights-based approach to health care access and to analyze which international responsibilities the Republic of South Africa has regarding the health rights of transgender persons. Both the advantages and limits of international adjudication and advocacy on behalf of trans people in the African system are also discussed.

KEYWORDS: South Africa. Human rights. Transgender. Discrimination. Access. Healthcare.

RESUMO

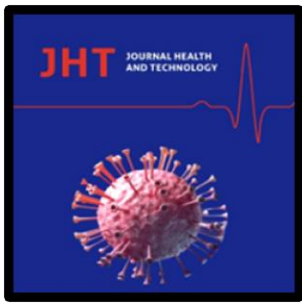
Pessoas LGBTQIA, em todo o mundo, vivenciam violência, discriminação e violação de direitos quase que diariamente. No campo dos direitos humanos e da saúde, mais especificamente, as pessoas trans

¹ Erasmus Mundus scholar and Social Work graduate student at the University of Stavanger (UiS) in Norway and previous Affiliated Researcher in the ERC-funded Human Rights Nudge project at the University of Copenhagen in Denmark. Graduate Law Diploma (International Law concentration) and a Bachelor's degree in International Relations and Politics (Brazil). Member of the Human Rights and Citizenship research group at the School of Legal and Social Sciences of the University of Vale do Itajai (UNIVALI), in Brazil.

²Professor Emerita. She holds a Ph.D. in Public Juridical Sciences from the University of Minho (Portugal), and a Master's in Law from UNIVALI. Coordinator of the Human Rights and Citizenship Research Group, registered with CNPq and UNIVALI's School of Legal and Social Sciences. Coordinator of UNIVALI's community project "Intergenerational Law and Transversality", which carries out interdisciplinary actions aimed at safeguarding the rights of children and adolescents through the provision of training courses and advisory services to civil society entities on cross-cutting issues supported by legislation relevant to ethnicity-race and gender.

³ Full professor and researcher at UNIVALI, at the School of Legal and Social Sciences. Active lawyer in Southern Brazil in the field of civil rights litigation. Juris Doctor (J.D.) degree from the University of Alicante (Spain), and a Ph.D. in Legal Sciences from UNIVALI, Brazil.

⁴Vice-Dean for Undergraduate Affairs at UNIVALI – Itajai Campus. Post-doctoral researcher at the University of Passo Fundo (UPF) and a Master's in Regional Development from the Fundação Universidade Regional de Blumenau and a Doctorate in Legal Sciences from the UNIVALI. Professor at the LLM/Ph.D. program in Legal Sciences at UNIVALI.



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

têm vulnerabilidades de saúde únicas e enfrentam mais violações de direitos, humilhação pública e violência institucional ao tentar navegar por um sistema de saúde essencialmente cisgênero. Por conta disso, esta pesquisa visa explorar o direito das pessoas trans ao acesso aos cuidados de saúde na África do Sul e possíveis remédios no sistema africano de direitos humanos. A metodologia empregada consiste em uma breve revisão da literatura, um projeto qualitativo baseado em múltiplas fontes e raciocínio teórico incorporado no quadro mais amplo dos direitos humanos, mais especificamente uma 'abordagem baseada em direitos humanos' para cuidados de saúde. O objetivo é empregar uma abordagem inovadora baseada nos direitos humanos para o acesso à saúde e analisar quais responsabilidades internacionais a República da África do Sul tem em relação aos direitos à saúde das pessoas transexuais. As vantagens e os limites da adjudicação internacional e da defesa em nome das pessoas trans no sistema africano também são discutidos.

PALAVRAS-CHAVE: África do Sul. Direitos humanos. Transgênero. Discriminação. Acesso. Saúde.

RESUMEN

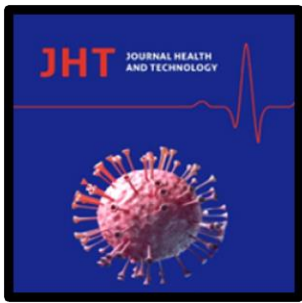
Las personas LGBTQIA, en todo el mundo, vivencian violencia, discriminación y violaciones de derechos casi diariamente. En el campo de los derechos humanos y la atención médica más específicamente, las personas trans tienen riesgos de salud únicos y enfrentan más violaciones de derechos, vergüenza pública y violencia institucional cuando intentan navegar a través de un sistema de atención médica esencialmente cisgénero. Por esa razón, esta investigación tiene como objetivo explorar el derecho de las personas transgénero a acceder a la atención médica en Sudáfrica y los posibles remedios en el sistema africano de derechos humanos. La metodología empleada consiste en una breve revisión de la literatura, un diseño cualitativo basado en múltiples fuentes y un razonamiento teórico integrado en el marco más amplio de los derechos humanos, más específicamente en un enfoque de la atención de la salud basado en los derechos humanos. El objetivo es emplear un enfoque algo innovador basado en los derechos humanos para el acceso a la atención médica y analizar qué responsabilidades internacionales tiene la República de Sudáfrica con respecto a los derechos de salud de las personas trans. También se discuten tanto las ventajas como los límites de la adjudicación internacional y la defensa en nombre de las personas trans en el sistema africano.

PALABRAS CLAVE: Sudáfrica. Derechos humanos. Transgénero. Discriminación. Acceso. Cuidado de la salud.

INTRODUCTION

Historically, transgender persons¹ have been discriminated against and marginalized in almost all aspects of life in society. Additionally, they face greater barriers when trying to access health care, mainly due to the absence of adequate care for transgender patients in pathology and laboratory medicine, structural and financial barriers, as well as a lack of health care policies, and the inability of healthcare professionals to provide appropriate care for this population (GUPTA et al., 2016; ROBERTS; FANTZ, 2014).

In Africa, violence against LGBTQIA persons is a critical area of concern (ARCUS FOUNDATION, 2019), and according to Jobson et al., (2012), transgender persons face further discrimination and invisibility in epidemiological data from African countries, especially in HIV risk determination, even though these populations face higher HIV prevalence rates. In South Africa specifically, a qualitative study performed by Müller (2017) shows that all trans participants interviewed



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

experienced – at different levels - discrimination by healthcare providers based on their sexual orientation and/or gender identity.

In the field of human rights and health care more specifically, even though LGBTQIA people, in general, are susceptible to experiencing discrimination at public health facilities in South Africa (MÜLLER, 2017), trans people have unique health risks and they face further rights violations, public shaming and institutional violence in all parts of life but especially when trying to navigate through an essentially cisgender healthcare system (GIBLON; BAUER, 2017; LUVUNO et al., 2019).

Moreover, according to Human Rights Watch (HRW) (2011, p. 1): “black lesbians and transgender men in South African townships and rural areas face an overwhelming climate of discrimination and violence despite protections promised them in the country’s constitution”. HRW conducted 120 interviews in six provinces, which demonstrated that transgender persons face overwhelming discrimination in their daily lives both from individuals and government agents (HRW, 2011). This structural violence reflects directly on the kind of care they receive when navigating the country’s healthcare system.

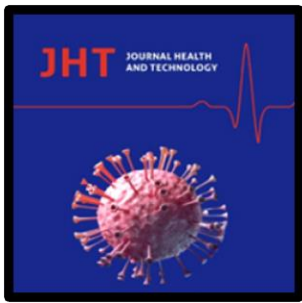
Previous works on the transgender population and health care in South Africa have discussed the issue of accessibility before, as well as service mapping and the quality of care (e.g., LUVUNO et al., 2019; SPENCER et al., 2017; WILSON et al., 2014), but did not necessarily incorporate a human rights-based approach, except from the comprehensive works of Müller (2016; 2017) and some other sparse contributions. Therefore, this article is an effort to contribute to the literature on transgender persons’ access to health care in South Africa, from a human rights viewpoint.

In lieu of possible rights violations, the role of the African human rights system is also discussed, exploring health care access as an international obligation of the state. The judicialisation of human rights in African politics is an emerging theme (BRETT, 2020), with unique nuances. Thus, this research modestly contributes to the expansion of the literature on the judicialisation and international adjudication of the right to health in South Africa more specifically, with possible repercussions to all state parties of the System. Both the advantages and limits of international adjudication and advocacy on behalf of trans people are also discussed.

1 RESEARCH METHODOLOGY

The methodology employed consists of a brief review of the literature (JESSON et al., 2011) on varied topics related to human rights and transgender health - as well as barriers to accessing and securing adequate health care – accompanied by inductive reasoning that is based on sources and findings of the article.

The research is qualitative (BUSETTO et al., 2020) in its nature, and data is gathered from multiple sources. This article employs, in general, a mix of exploratory and argumentative narratives, aiming to uncover crucial themes related to LGBTQIA health in South Africa.



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

In addition, the theoretical background of this article is embedded in the larger framework of human rights, more specifically a 'human rights-based approach' (HRBA) to health care (LONDON, 2008) and the international human rights obligations of the state under the African Charter on Human and Peoples' Rights (UN HUMAN RIGHTS, 2018).

Ultimately, the goal is to explore transgender persons' right to access health care (or lack thereof) in South Africa and possible remedies in the African human rights system.

2 THE STATE OF LGBT RIGHTS IN THE AFRICAN HUMAN RIGHTS SYSTEM

Regional human rights systems are those systems designed to protect and implement human rights in a specific part of the world, as such, they possess particular legal instruments, judicial and non-judicial bodies, and specific procedures. According to Heyns et al., (2006), regional systems complement the general mandate of the global human rights system – in which the UN plays a major role – and they also allow regional values to be considered when human rights norms are constructed.

Therefore, “regional human rights protection mechanisms constitute important pillars of the international system for the promotion and protection of human rights” (BENEDEK et al., 2010, p. 2). Generally, a regional human rights system will have its mandate under the auspices of a regional integration body or system that usually has a broader scope than just human rights - in the case of Africa, the African Union (AU); in the Americas, it is the Organization of American States (OAS); and in Europe, the Council of Europe (CoE) (HEYNS et al., 2006).

The African human rights system (hereinafter referred to as the “African System”, or just “System”) was born from the African Charter on Human and Peoples' Rights, adopted in June 1981. The African Charter, as described by Evans and Murray (2002) is the regional mechanism for the promotion and protection of human rights on the African continent and has many unique nuances. Although the System has received its fair share of critiques over the years, both from scholars and practitioners, “there is evidence to support the supposition that the African system that in the past was of very little value now assumed much greater importance given the basic shifts in the continents political economy” (KUFUOR, 2010, p. 3).

In 2016, an important historical milestone was reached by the African System, which marked the 30th anniversary of the entry into force of the African Charter and the tenth anniversary of the operationalisation of the African Court on Human and Peoples' Rights Centre for Human Rights, University of Pretoria, (2016). Another important fact is that all African Union member states have ratified the African Charter, except Morocco. The institutional structure of the System can be seen in Figure 1.

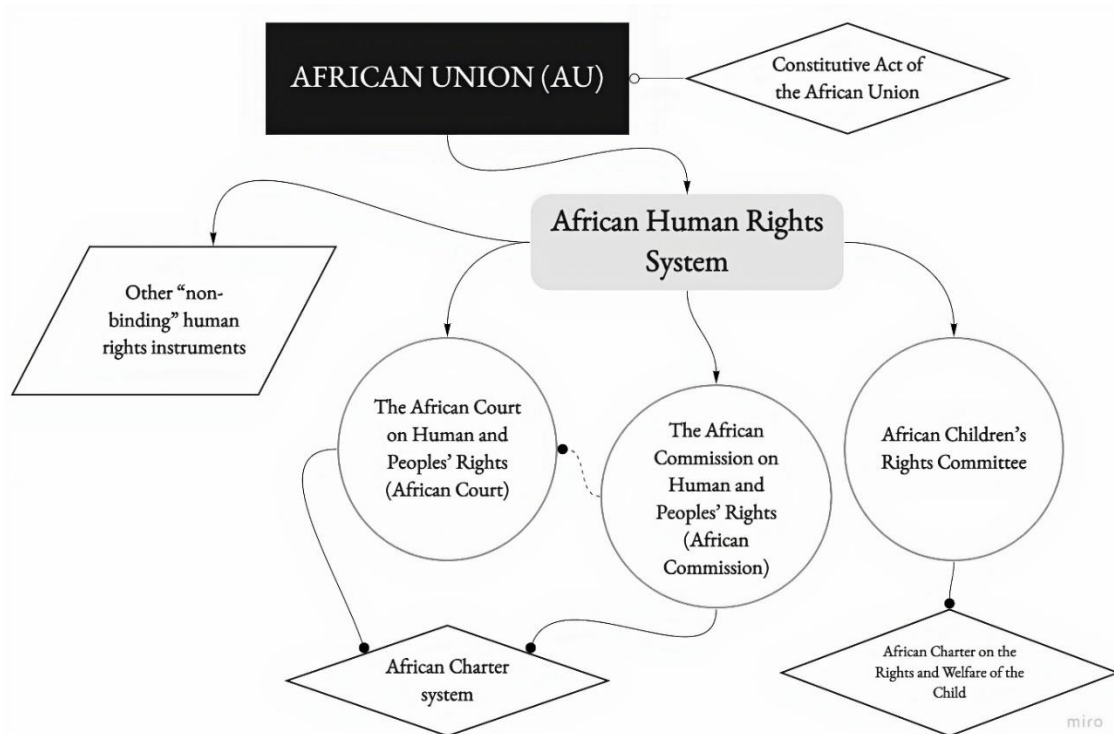


Figure 1. The institutional and normative architecture of the African human rights system. Elaborated by the authors, based on Ayeni (2019).

However, despite the recent developments of the System and the expansion of its jurisdiction and scope in the last decades, the question of LGBT human rights remains residual, to say the least, in the System's human rights agenda. In fact, "[...] issues related to sexual orientation and gender identity have not featured prominently in the African human rights system." (VILJOEN, 2016, p. 29). It was only in 2014 that the African Commission issued its first resolution condemning human rights violations and violence on the basis of sexual orientation or gender identity (AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, 2014). Nonetheless, the non-binding effect of this resolution makes it difficult to foster compliance among the state parties of the System.

It is important to stress that LGBT rights are not a set of "special rights", instead, they are the same universal rights that LGBTQIA people, like others, should be able to enjoy (THORESON, 2014, p. 94) but are often neglected of due to violence and discrimination. The African Charter, which is the cornerstone of the African human rights system, does not mention any explicit reference to sexual orientation or gender identity. This resistance to incorporate the discourse on the human rights of African LGBTQIA persons into the System's agenda is a product - among other things – of the "African morality and traditional values" that allow or even require discrimination against these people; and the anti-LGBT sentiment that is rooted in the majority of African societies (VILJOEN, 2016).



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

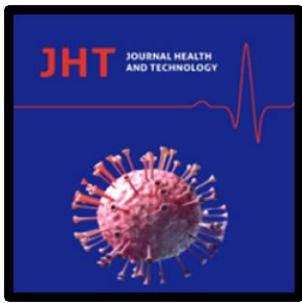
Thus, the state of LGBT rights in the African human rights system is very incipient. For instance, the African Commission's 'protective' and 'promotional' mandates have largely failed to effectively protect LGBTQIA people and communities in the African continent against violence and discrimination. In fact, "life imprisonment is [still] imposed for homosexual activity in several African (e.g., Sierra Leone, Tanzania, Uganda) [...] countries. The ultimate punishment of death is meted out in the African countries of Mauritania, Sudan, Nigeria, [and] Somalia [...]" (NOTARO, 2020, p. 24).

However, one cannot overlook some positive achievements within the African regional human rights framework, such as recent applications of the African Charter on behalf of the rights of LGBTQ+ people (see IZUGBARA et al., 2020). The problem is that legal and policy instruments within the System do not explicitly mention LGBTQIA persons and lack clear and effective mechanisms for answerability among member states (IZUGBARA et al., 2020). Despite that, according to Kerrigan (2013, p. 15), the African human rights system still is an important forum for discussion of LGBT rights and gender issues. Therefore, possibilities and limitations of the advocacy for and judicialisation of LGBT rights in the African human rights system will be discussed further on, focusing on the transgender persons' right to access health care in South Africa.

3 HUMAN RIGHTS AND THE LGBTQIA COMMUNITY IN SOUTH AFRICA

Concerning terminology: as both categories of gender and sexual orientation can be fluid and encompass a variety of spectrums that represent different identities, the LGBTQIA acronym here utilized is not meant to totalize or exclude anyone, instead, it is viewed as an umbrella term which refers to the community as a whole. The important thing is to deconstruct binary notions around gender and sexuality and unmask "[...] the complicated realities and variety in the realm of social identity" (KANG et al., 2017, p 34), instead of favouring binary systems. Therefore, when one uses the terminology "LGBT" rights, one is simply referring to the transnational advocacy movement on behalf of the human rights of LGBTQIA people (THORESON, 2014); the aim is not to exclude other identity categories, but to employ what Winer (2015, p. 82) classified as "higher levels of generality" in the discourse concerning LGBT rights and international human rights law.

With that said, the quest for LGBT rights in South Africa - and the African continent more generally - is not a new topic, researchers in a variety of fields have already explored the issue from different perspectives. Nyeck and Shepherd (2019) explored the economic consequences of LGBTQIA discrimination in South Africa in the context of LGBT rights and the socio-political sphere. According to them, the Constitution of South Africa is a progressive document with substantive protections that are beneficial for LGBTQIA persons, however, negative attitudes towards this population are still very common. From a legal perspective, Venter (2021) argues that cases discussed in the South African judicial system have been proactively pursued to remedy human rights violations committed against LGBTQIA individuals in South Africa, whilst on the other hand, there is a huge discrepancy between the



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

legal protection and remaining systemic discrimination and social unacceptance of these population. Earlier, Christiansen (2000) and Massoud (2003) arrived at the same conclusion: that despite a progressive legal change in favour of LGBT rights in the country, there was a gap between progressive laws and South African conservative social attitudes. Therefore, LGBT rights in South Africa remain an unfulfilled promise:

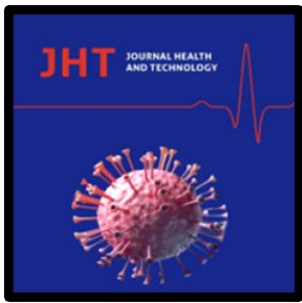
The country now has some of the most progressive LGBTQ laws in the world, including full constitutional protections against discrimination. This legal environment is unmatched on a continent where colonial-era laws against gay sex are still commonplace, and where offenders in some nations face the death penalty. [...] The rights promised on paper in South Africa remain out of reach for many who need them most, particularly those fleeing homophobia elsewhere. For them, a quite different South Africa awaits: morally conservative, hostile to outsiders, and often profoundly violent (DE GREEF, 2019, p. 4; 6).

In sum, when talking about LGBT rights in South Africa, there seems to be a consensus around the fact that there is a stark contrast between the written policies and lived experiences of LGBTQIA persons (PILLAY, 2018, p. 2). It is important to highlight that this scenario is even worse in the case of transgender people: according to a recent and comprehensive study by Luhur, Mokgoroane, and Shaw (2021), many transgender persons are not able to obtain legal recognition of their gender (especially those from the poor working class, peri-urban, or rural areas), which often blocks them from obtaining proper legal documents, “[...] essentially prohibiting access to basic services such as health care, education, employment, and travel; receiving social grants; or undertaking essential tasks such as opening a bank account, accessing temporary housing, acquiring a driving license, and voting” (LUHUR; MOKGOROANE; SHAW, 2021, p. 2), among other discriminatory measures such as lack of access to access to bathrooms according to gender identity.

Recently available studies have also focused on the issue of transgender people’s access to health care in South Africa, whereas they have indicated the encounter of institutional violence, ignorance, and micro-aggressions by healthcare workers towards trans persons (LUHUR; MOKGOROANE; SHAW, 2021). Going forward, the intention is to add up to this conversation, addressing the delivery of health care services to these populations from a human rights viewpoint. The main argument is that transgender persons’ access (or lack thereof) to adequate healthcare in South Africa is not solely a gender or socio-cultural issue, but a human rights issue that should be addressed as such by researchers and the international community, especially when advocating for better health policy outcomes in favour of people who identify as transgender.

4 TRANSGENDER PERSONS’ ACCESS TO HEALTH CARE IN SOUTH AFRICA AS A HUMAN RIGHTS ISSUE

The right to health, or the *right to the enjoyment of the highest attainable standard of physical and mental health*, in its full name, is not new. It was first introduced, internationally, in the 1946



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

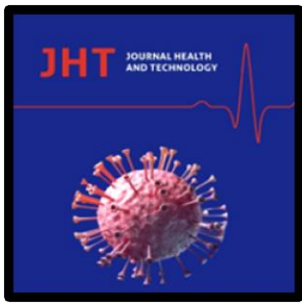
HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

Constitution of the World Health Organization (WHO), and later embraced in the 1948 Universal Declaration of Human Rights as part of the right to an adequate standard of living (art. 25), and fully recognised as a human right *per se* in the 1966 International Covenant on Economic, Social and Cultural Rights (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2008). Moreover, according to the WHO (2017, para. 2, our italics): “understanding health as a human right creates a legal obligation on states *to ensure access* to timely, acceptable, and affordable health care of appropriate quality as well as to providing for the underlying determinants of health, such as safe and potable water, sanitation, food, housing, health-related information and education, and gender equality.” Therefore, the right to health encompasses an array of obligations and components to be followed and provided by the state, including the duty to provide equal and non-discriminatory access to health care (GIORGI, 2012). In addition, the WHO states that (2017, p. 5): “non-discrimination and equality requires states to take steps to redress any discriminatory law, practice or policy.”

When talking about disparities in health and healthcare access, Baptiste-Roberts et al., (2018) argue that substantial attention has been given to race/ethnic and socioeconomic disparities, but not enough focus was directed towards sexual orientation and gender healthcare disparities, especially in the context of sexual minorities. The concept of “LGBT health” was brought up to address these challenges at some level, which means that LGBTQIA individuals have specific health needs – *i.e.*, they are frequently exposed to increased risk of disease that requires specialized, culturally appropriate approaches (MEYER; NORTHRIDGE, 2007). In the field of mental health, for example, there is mounting evidence in favour of a sexual and gender minority (SGM)-affirmative mental health practice (PACHANKIS; SAFREN, 2019). This means that those who are sexual and gender minorities have particular health and healthcare access challenges that should be acknowledged and addressed by the state, as there are multiple barriers to care at the structural and individual level for SGMs (BAPTISTE-ROBERTS et al., 2018), especially for transgender persons. In “Barriers to Health Care for Transgender Individuals”, Safer et al (2017, p. 168, our italics) paint a very comprehensive picture of the unique challenges encountered by transgender people in the fields of health and health care in general:

Transgender persons suffer significant health disparities in multiple arenas. Real or perceived stigma and discrimination within biomedicine and the healthcare provision in general may impact transgender people’s desire and ability to access appropriate care. Transgender women (male to female) are internationally recognized as a population group that carries a disproportionate burden of HIV infection, with a worldwide HIV prevalence of 20% [...] Although some of these healthcare barriers are faced by other minority groups, many are unique, and *many are significantly magnified for transgender persons.*

Taking that into account, the objective is to help expand the literature on LGBT health and LGBT rights by contextualizing the challenges that transgender persons have when trying to access health



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

care in South Africa, framing the issue in the language of human rights. The issue of access to health care by LGBTQIA persons in South Africa has been thoroughly discussed before by Müller (2016; 2017) and Meer and Müller (2017) (amongst others) in terms of health policy and “queer health needs”. According to them, healthcare spaces are overwhelmingly heteronormative and even though LGBTQIA or queer service users indeed challenge the system, “wider efforts are needed to transform the material and ideological space of healthcare facilities through law and policy reform and continuing professional training for healthcare providers” (Meer and Müller, 2017, p. 92). Therefore, the aim is to elaborate on that by exploring how the African human rights system (can or cannot) force health law and policy reform in favour of LGBTQIA people in general, but especially for transgender individuals.

The majority of respondents in a survey reported by Stevens (2012) stated that health workers in South Africa presented either discriminatory or hostile behaviour, or both. In addition, 60% of transgender respondents in the same study appear to have gone through negative experiences in public health facilities (STEVENS, 2012). Therefore, this seems to be the first – and maybe the biggest - barrier to the access of transgender persons to adequate health care in the country: implicit or explicit transphobia and/or gender-based violence (either physical or symbolic) perpetrated by healthcare workers and service providers.

Even though the African Charter does not mention the prohibition of discrimination based on gender identity or sexual orientation, Article 2 lays a strong foundation on the right to freedom from any form of discrimination, whilst Article 5 mandates that “every individual shall have the right to the respect of the dignity inherent in a human being [...]” (Organization of African Unity [OAU], 1982). Therefore, discriminatory and oppressive behaviour in health clinics performed by nurses, doctors, counsellors, or administrative staff (which are all agents of the state) towards transgender persons is a direct violation of the Charter and possibly several other human rights instruments, including Resolution 275 of the African Commission and the UN International Covenant on Economic Social and Cultural Rights General Comment 14. Moreover, the lack of effort by the South African state to change and remediate this situation can be interpreted as a human rights violation by omission under international human rights law (CHRISTENSON, 1991). It is important to notice that access to healthcare, in general, is challenging in South Africa due to economic disparities, but that SGMs encounter in addition all sorts of institutional and interpersonal violence when seeking medical attention:

[...] where the vast majority of the population depend on health services in the under-resourced and overburdened public sector [...] [And] in this highly unequal system, sexual and gender minority people face the general challenges of service and supply unavailability, long waiting times, and a lack of specialized personnel and services, but also encounter homo- and transphobic discrimination and prejudice on top of these other barriers (MÜLLER, 2017, p. 2).

In addition, transgender women in South Africa are disproportionately affected by the HIV epidemic, being at greater risk of acquiring it even at early stages of life such as adolescence



(SULLIVAN et al., 2020). The lack of adequate and efficient public health measures to tackle this problem and to prevent these often marginalized individuals from acquiring HIV or to provide them with adequate treatment if they do so can also be interpreted as a health rights violation, in the sense that “[...] a lack of respect for human rights fuels the spread and exacerbates the impact of the disease, while at the same time HIV undermines progress in the realisation of human rights” (OHCHR, 2021, p. 3).

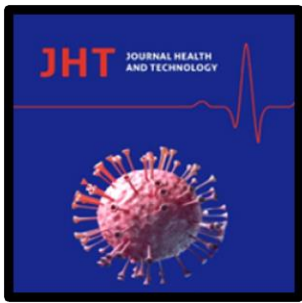
Nonetheless, as well argued by Ngwena (2000), only the formal recognition of access to health care as a human right in South Africa under the Constitution as well as international human rights instruments might not be enough to provide people with the full enjoyment of this right. Underinvestment in the state-funded health system, poverty, and other socio-economic inequalities - as well as the discriminatory behaviour above described – also contribute to poor health outcomes and to the (low) quality of care that is delivered. That is why we propose a human rights-based approach to healthcare access. In that sense, “human rights approaches can include holding states and other parties accountable, developing policies and programs consistent with human rights, and facilitating redress for victims of violations of the right to health” (LONDON, 2008, p. 65). Going forward, both possibilities and limitations to redress measures in the African human rights system will be discussed, bringing forward the role of the System in addressing the health rights of transgender persons in the South African context.

5 ADVOCACY, JUDICIALISATION, AND NAMING AND SHAMING STRATEGIES IN THE AFRICAN HUMAN RIGHTS SYSTEM

Taking into account the discussion in previous sections, one can affirm that transgender persons encounter several barriers and possible rights violations when trying to navigate through the public, state-funded health system in South Africa. This statement in itself is not necessarily new and has been explored before by other authors. The novelty in what is being proposed here relies on the avenues for accountability and redress for the victims of health rights violations, in the African human rights system specifically. That important portion of the HRBA to health has not been sufficiently explored in the literature on LGBTQIA health and rights in Africa. Thus, a “human rights tripod framework” will be presented which involves: (i) transgender rights advocacy; (ii) judicialisation of health rights; and (iii) “naming and shaming” strategies in the African human rights system. Both possibilities and limitations to this approach will also be discussed going forward.

5.1 Advocacy

According to the OHCHR’s *Manual on Human Rights Monitoring* (2011, p. 5): “advocacy involves a wide variety of techniques, including direct or indirect pressure, politeness, humility, showing empathy for the interlocutor, praise and stressing mutual objectives or developing solutions together.



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

An act as simple as the dissemination of human rights documents can be an effective tool [...]” Advocacy then means taking action on behalf of (or alongside) a person, group of people, or community in order to get a certain message across to relevant stakeholders and to seek remedies to suffered injuries, especially in the context of rights violations. As stated in the Manual, human rights advocacy may encompass a wide range of tactics in public education, media work, lobbying, political action, legal advocacy, and monitoring (LORD et al., 2012, p. 2 of Part 3).

We believe that in the context of the health rights violations of transgender persons in South Africa, multidimensional rights advocacy alongside “client-centered” human rights advocacy (HAYNES, 2006) may be the most beneficial strategy for achieving redress measures as well as change in societal and policy structures. In that sense, advocates for transgender rights and LGBT rights, in general, should take into consideration different platforms for activism that should address not only the legal system, but the oppressive schemes built into cultural, economic, and political practices. In that sense, we propose the adaption of Carroll's (2010) six-steps plan for effective LGBT rights advocacy (see Figure 2).

It is important to stress that advocacy put forward by civil society organisations already takes place in South Africa. OUT for example is one of the oldest LGBT organisations in the country and has been involved with advocacy work since 2006 (OUT, 2021). Supported by ActionAid South Africa, the Rainbow Activist Alliance (RAA) “[...] works with more than 450 lesbian and bisexual women to challenge the patriarchal and discriminatory attitudes and perceptions in their communities that fuel violence.” (ACTIONAID USA, 2021, p. 11). In addition, when it comes to advocacy for transgender rights more specifically, Gender Dynamix (GDX), established in 2005, “is the first registered Africa-based public benefit organisation to focus solely on trans and gender diverse communities” (GENDER DYNAMIX, 2021, p. 1). The work of these organisations (and the people that compose them) is essential to LGBT rights advocacy in South Africa, and in the whole African continent to a certain extent.

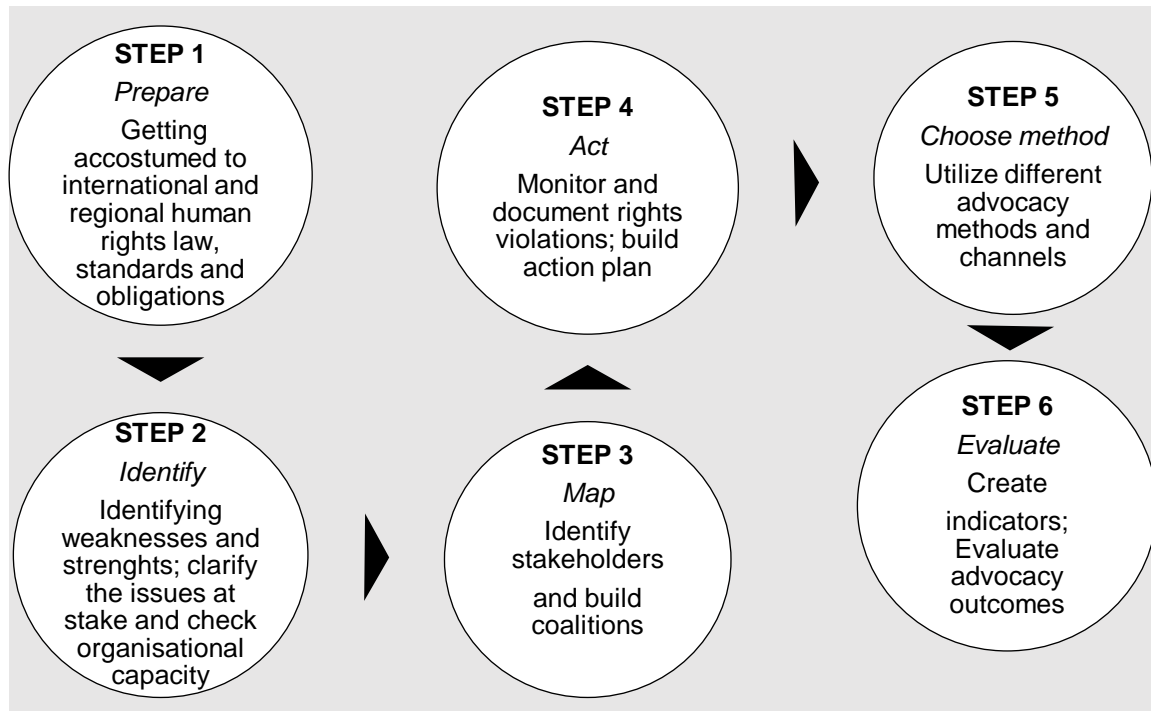
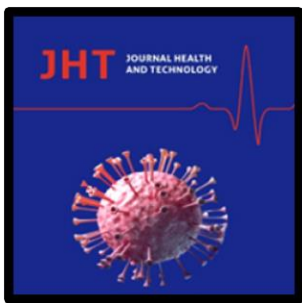


Figure 2. A six-step process for working on advocacy issues. Elaborated by the authors, based on Carroll (2010).

In the context of human rights regimes and regional human rights monitoring bodies, both domestic and transnational advocacy mobilization has been indicated as key to fostering human rights compliance and appropriate governmental response to rights violations (MORAVCSIK, 2000; KECK; SIKKINK, 1998). In the African human rights system, local African civil society organisations and networks helped consolidate the mandate of the system and expand its significance (OKAFOR, 2007). However, still, there is “[...] limited direct access by individuals and NGOs to the Court due to a limited number of States that have accepted the Court’s jurisdiction and allowed individuals and NGOs direct access to the Court.” (SSENYONJO, 2018, p. 41). Nonetheless – despite the limitations and constraints - advocacy, campaigning, and activism still represent important tools in the task of denouncing rights violations, demanding reparations, and changing harmful policies and practices. Going forward we will explore how advocacy can translate into judicialisation or international adjudication of the health rights of transgender people in the South African context.

5.2 Judicialisation

According to the LEXICO online dictionary (2021, p. 1), to judicialise means “[...] make [something] judicial in character; to treat judicially; [...] subject to judicial process or decision.” In the context of human rights, it mostly means bringing human rights violations to the attention of a judicial body which will then analyse the claims and eventually provide a decision, either binding or non-binding.



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

With the “reborn” of international law in the post-Second World War scenario, international human rights institutions and regimes have proliferated worldwide. The so-called “language of human rights” has found fertile soil to grow in and “the proliferation of international courts and tribunals in the last two decades has been an important new development in international law” (HERNÁNDEZ, 2014, p. 919). Therefore, the phenomenon of “judicialisation” has become quite common, especially in regional human rights mechanisms but also at the global level, especially within the United Nations system. The term is also widely used especially in the Political Science literature:

The judicialisation of politics—the reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies—is arguably one of the most significant phenomena of late twentieth- and early twenty-first-century government. Armed with newly acquired judicial review procedures, national high courts worldwide have been frequently asked to resolve a range of issues from the scope of expression and religious liberties and privacy to property, trade and commerce, education, immigration, labour, and environmental protection (HIRSCHL, 2013, p. 1).

The processes of constitutionalisation of rights either at the domestic or international level have also contributed to the possibility of human rights adjudication (NWEZE, 2007). Therefore, Courts and other quasi-judicial bodies play an increasingly important role in developing, implementing, and shaping legal standards and understandings in the field of human rights. According to Hillebrecht (2014, p. 3) “the rise of the international legalization of human rights now makes it possible for individual constituents to sue their governments at international courts like the European Court of Human Rights (ECtHR) and the IACtHR”, which is part of the judicialisation trend in human rights practice. In Africa, Brett (2020, p. 1) argues that three main factors have made judicialisation possible in the continent as a whole: “[...] new corporate rights norms (including the expansion of indigenous rights), the proliferation of new avenues for legal proceedings, and the development of new support structures enabling litigation”.

Judicialisation of human rights has served as a trampoline in many countries to reach rights recognition and realisation, especially in Latin America where the Courts have played an active role in upholding the rule of law and making up for the lack of respect for human rights and democratic institutions and processes (MADEIRA; GELISKI, 2017). Even though there is also evidence of backsliding or deterioration in compliance with human rights (TASIOULAS, 2019, p. 1196), judicialisation still provides avenues for accountability and enforcement of legal rights either in domestic or international institutions and jurisdictions (ANSOLABEHERE, 2016). Judicialisation of the right to health more specifically is also a recurring theme in health law. Although the evidence found is far from convergent on this subject, the main findings are that judicialization of the right to health is crucial to ensure patients access to services to which they are entitled but was eventually denied (BIEL et al., 2016; FERRAZ, 2016; RIBEIRO; HARTMANN, 2016). The problem seems to be that judicialisation of health care and health rights may not translate into beneficial changes for society and the rights of the

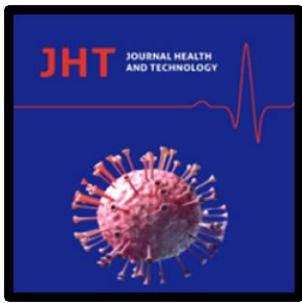


LGBTQIA community in this context, possibly generating negative impacts on equity if the litigation is conducted in an individualized fashion (ANDIA; LAMPREA, 2019).

In addition, judicialisation also depends on the strength of the judicial or non-judicial body and its ability to push for the implementation of its decisions. In the context of the African human rights system, the roles of the African Commission on Human and Peoples' Rights (hereinafter the "African Commission") and the African Court on Human and Peoples' Rights (hereinafter the "African Court") in upholding human rights standards and norms in the African continent has been widely contested. Critics argue that the protective role of the African Commission, its quasi or non-judicial stature, and the non-binding nature of its decisions are virtually ineffective to realize human and peoples' rights in the African continent (EZENNIA, 2015). Furthermore, when it comes to the African Court, access for individuals and groups to the Court's judicial mechanism is highly limited (EZENNIA, 2015), alongside other limitations imposed by the rule of exhaustion of domestic mechanisms (ONORIA, 2003). In sum, judicialisation in the African human rights system may be difficult in the sense that "[...] access to these [judicial] mechanisms elude most African individuals and groups. As such, their quest to obtain justice through [them] is often defeated" (EZENNIA, 2015, p. 118).

5.3 Naming and shaming

"Naming and shaming" is the process through which people, organisations, or third countries publicly denounce the abusive practices and human rights violations of the so-called "shamed" country. This is an emerging concept in the human rights literature and movement, and there is still little empirical evidence of its efficacy or inefficacy. According to Ausderan (2014, p. 93), "although naming and shaming is meant to coerce governments into stopping human rights violations, its track record has been mixed [...]." Nonetheless, naming and shaming still is the most used strategy by human rights groups (FRANKLIN, 2015, p. 46). As enforcement of human rights norms and principles highly depends on available information on abuses and violations, publicisation of rights violations and mobilising public opinion seem to be the centre of the task for compliance and accountability: "[...] naming and shaming becomes the primary tool that is available to groups that support human rights against governments that are not already committed to human rights reform. Furthermore, naming and shaming can be used to pressure third-party governments to utilize coercion or sanctions against violating governments" (FRANKLIN, 2015, p. 46). On the other hand, the mere publicisation of human rights violations may not necessarily translate into accountability for the state and redress for the victims. Moreover, due to prejudices yet rooted in many African societies, public opinion might not favour the discourse on transgender rights. Therefore, it is unclear whether or not healthcare providers or government authorities would be successfully "shamed" for violating the health rights of transgender individuals in South Africa.

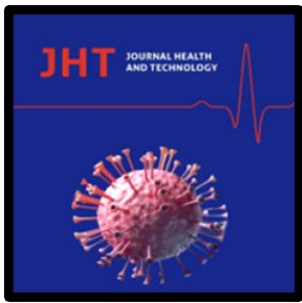


6. CONCLUDING REMARKS

Based on the experiences of transgender persons with public health clinics in South Africa, described in previous studies and surveys, this article aimed to explore transgender persons right to access health care (or lack thereof) in the South African Republic and possible remedies in the African human rights system. Discrimination, public shaming, and violence of all sorts were usually encountered by these non-gender conforming individuals when trying to navigate through an essentially cisgender health care system. Thus, even though the right to non-discrimination is present both in the South African Constitution and the African Charter, there seems to be a consensus amongst LGBT rights scholars that there is a huge gap between formally recognized rights and the lived experiences of LGBTQIA persons in that country. This anti-LGBT sentiment has perverted the mind and actions of many healthcare delivers, who serve as gatekeepers that prevent equal access to healthcare by gender and sexual minorities.

This paper addresses a relevant and important question - if and how African regional human rights mechanisms can be employed to address health rights violations of trans persons in South Africa. It considers the topics of bias and discrimination, violations of human rights, and human rights activism and systems' responses. We proposed that the lack of access to adequate health care services by transgender persons in South Africa be viewed and interpreted through the lenses of human rights. Transgender people are human and therefore are entitled to the same rights any other human being possesses. However, they are not viewed as equal by their gender-conforming counterparts and are therefore subjected to discrimination and rights violations. Thus, we chose to examine the role of the African human rights system in addressing these abuses, proving redress measures, and preventing future violations from happening. It was identified that the question of LGBT human rights remains residual, to say the least, in the System's human rights agenda but that it might still be an important forum for discussion of LGBT rights and gender issues. Considering that, we analysed mainly three strategies to be employed within the System: (i) transgender rights advocacy; (ii) judicialisation of health rights; and (iii) "naming and shaming" strategies.

Some limitations of this research article are that, for example, we were not able to track more queer/LGBTQIA outreach work being carried out by activists in South Africa. Advocacy seems to be an important feature of LGBTQIA movements in South Africa and can provide avenues for challenging transphobic practices in and outside healthcare structures. However, judicialisation and "naming and shaming" strategies - which are common themes in the Western liberal tradition of human rights - do not seem to fit correctly into the South African context. Access to judicial measures by individuals and groups in the African human rights system is still very limited. Equally, naming and shaming health care providers or government authorities for their discriminatory behaviour towards transgender or other LGBTQIA individuals may not be as effective in a society with little if no regard for the well-being of



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

gender and sexual minorities. In addition, health rights litigation may not produce positive effects beyond the individual level and may also result in negative impacts on equity in health care provision. Moreover, we wish we could have further explored past judicial or advocacy efforts within the African human rights system concerning LGBT rights, but that information was relatively hard to come by.

Nonetheless, in sum, the African system's historical lack of effective response to LGBT rights violations in the African continent, alongside weak enforcement instruments, suggests that this may not be exactly the right forum to address the health rights violations of transgender people in South Africa. In that sense, we encourage future research on this topic to indicate or propose other solutions that are more aligned with the institutional reality of human rights in Africa. Nonetheless, the Courts cannot change a nation, it is only through Education that is sensitive to gender and human rights issues that progress in interpersonal relations can be achieved. Prejudice must be addressed and fought against in the legal system as well but can only be eradicated (or at least reduced) when cultural and socio-political practices are contested and transformed. Legal instruments alone will not likely provide the liberation of transgender people in South Africa and transgender human rights movements might have to combine strategies at other levels of society to achieve equality.

Notes

1. In the context of this research, we adopt the definition of transgender provided by the American Psychological Association (2011, p. 1), as follows: "transgender is an umbrella term for persons whose gender identity, gender expression, or behaviour does not conform to that typically associated with the sex to which they were assigned at birth. Gender identity refers to a person's internal sense of being male, female, or something else; gender expression refers to the way a person communicates gender identity to others through behaviour, clothing, hairstyles, voice, or body characteristics."

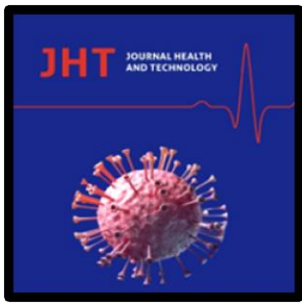
REFERENCES

ACTIONAID USA. **Campaigning for LGBTQI Rights in South Africa**. USA: ActionAid, 2021. <https://www.actionaidusa.org/work/campaigning-lgbtqi-rights-south-africa/>. Retrieved 2 October 2021.

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. **275 Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity**. Gambia: ACHPR, 2014. <https://www.achpr.org/sessions/resolutions?id=322>. Retrieved 7 August 2021.

AMERICAN PSYCHOLOGICAL ASSOCIATION. **Answers to your questions about transgender people, gender identity, and gender expression**. Massachusetts: APA, 2011. <http://www.apa.org/topics/lgbt/transgender.aspx>. Retrieved 2 September 2021.

ANDIA, T.; LAMPREA, E. Is the judicialization of health care bad for equity? A scoping review. **International Journal for Equity in Health**, v. 18, n. 1, p. 1-12, 2019. <https://doi.org/10.1186/s12939-019-0961-y>



JOURNAL HEALTH AND TECHNOLOGY - JHT

ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

ANSOLABEHRE, K. One norm, two models. Legal enforcement of human rights in Mexico and the United States. **Mexican Law Review**, v. 8, n. 2, p. 115-146, 2016. http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-05782016000100115&lng=es&tlng=en.

ARCUS FOUNDATION. **Data Collection and Reporting on Violence Perpetrated Against LGBTQI Persons in Botswana, Kenya, Malawi, South Africa, and Uganda**. [S. l.]: Arcus Foundation, 2019. <https://www.arcusfoundation.org/wp-content/uploads/2020/04/Iranti-Violence-Against-LGBTQI-Persons-in-Botswana-Kenya-Malawi-South-Africa-Uganda.pdf>. Retrieved 20 June 2021.

AUSDARAN, J. How naming and shaming affects human rights perceptions in the shamed country. **Journal of Peace Research**, v. 51, n. 1, p. 81–95, 2014. <https://doi.org/10.1177/0022343313510014>

AYENI, V. The African Human Rights Architecture: Reflections on the Instruments and Mechanisms within the African Human Rights System. **Beijing Law Review**, v. 10, n. 02, p. 302-316, 2019. <https://doi.org/10.4236/blr.2019.102019>

BAPTISTE-ROBERTS, K.; ORANUBA, E.; WERTS, N.; EDWARDS, L. Addressing Health Care Disparities Among Sexual Minorities. **Obstetrics and Gynecology Clinics of North America**, v. 44, n. 1, p. 71-80, 2017. <https://doi.org/10.1016/j.ogc.2016.11.003>

BENEDEK, W. *et al.* (2010). **The role of regional human rights mechanisms**. [S. l.]: Directorate-General for External Policies of the Union, 2010. Retrieved 24 July 2021, from [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET\(2010\)410206_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf).

BIEHL, J.; SOCAL, M.; AMON, J. The Judicialization of Health and the Quest for State Accountability: Evidence from 1,262 Lawsuits for Access to Medicines in Southern Brazil. **Health Hum Rights**, v. 18, n. 1, p. 209–220, 2016. <https://pubmed.ncbi.nlm.nih.gov/27781011/> Retrieved 2 October 2021.

BRETT, P. **Human Rights and the Judicialisation of African Politics**. Oxon: Routledge, 2020.

BUSETTO, L.; WICK, W.; GUMBINGER, C. How to use and assess qualitative research methods. **Neurological Research and Practice**, v. 2, n. 14, p. 1-10, 2020. <https://doi.org/10.1186/s42466-020-00059-z>

CARROLL, A. **Make It Work**: Six steps to effective LGBT human rights advocacy. Brussels: The European Region of the International Lesbian, Gay, Bisexual, Trans & Intersex Association (ILGA), 2010.

CHRISTENSON, G. A. Attributing Acts of Omission to the State. **Michigan Journal of International Law**, v. 12, n. 2, p. 312-370, 1991. <https://repository.law.umich.edu/mjil/vol12/iss2/2>. Retrieved 1 October 2021.

CHRISTIANSE, E. Ending the Apartheid of the Closet: Sexual Orientation in the South African Constitutional Process. **N.Y.U. J. of International Law and Politics**, v. 32, p. 997-1058, 2000. <https://digitalcommons.law.ggu.edu/pubs/131/>. Retrieved 5 September 2021.

DE GREEF, K. THE UNFULFILLED PROMISE OF LGBTQ RIGHTS IN SOUTH AFRICA. **The Atlantic**, Online, July 2, 2019. <https://www.theatlantic.com/international/archive/2019/07/southafrica-lgbtq-rights/593050/>. Retrieved 5 September 2021.



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

EVANS, M.; MURRAY, R. (Eds.). **The African charter on human and peoples' rights: The System in Practice**, 1986–2000. Cambridge: Cambridge University Press, 2002.

EZENIA, C. N. Access to Justice Mechanisms for Individuals and Groups under the African Regional Human Rights System: An Appraisal. **African Journal of Legal Studies**, v. 8, n. 1-2, p. 115-144, 2015. <https://doi.org/10.1163/17087384-12342058>

FERRAZ, O. Moving the Debate Forward in Right to Health Litigation. **Health Hum Rights**, v. 18, n. 2, p. 265–268, 2016. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5394994/>. Retrieved 2 October 2021.

FRANKLIN, J. C. Human Rights Naming and Shaming: International and Domestic Processes. In: FRIMAN, H. R. (eds) **The Politics of Leverage in International Relations**. Palgrave Studies in International Relations Series. London: Palgrave Macmillan, 2015.

GENDER DYNAMIX. **Advancing Transgender Human Rights**. Africa do Sul: Gender Dynamix, 2021. <https://www.genderdynamix.org.za/>. Retrieved 2 October 2021.

GIBLON, R.; BAUER, G. Health care availability, quality, and unmet need: a comparison of transgender and cisgender residents of Ontario, Canada. **BMC Health Services Research**, v. 17, n. 1, p. 1-10, 2017. <https://doi.org/10.1186/s12913-017-2226-z>

GIORGI, M. S. **The Human Right to Equal Access to Health Care**. Rotterdam: Erasmus University Rotterdam, 2012.

GUPTA, S.; IMBOREK, K.; KRASOWSKI, M. Challenges in Transgender Healthcare: The Pathology Perspective. **Laboratory Medicine**, v. 47, n. 3, p. 180-188, 2016. <https://doi.org/10.1093/labmed/lmw020>

HAYNES, D. Client-Centered Human Rights Advocacy. **NYLS Clinical Research Institute Paper**, n. 05/06, 2006. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=819264#. Retrieved 2 October 2021.

HERNANDEZ, G. The Judicialization of International Law: Reflections on the Empirical Turn. **European Journal of International Law**, v. 25, n. 3, p. 919-934, 2014. <https://doi.org/10.1093/ejil/chu066>

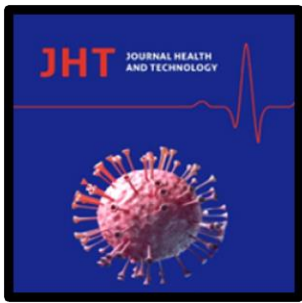
HEYNS, C.; PADILLA, D.; ZWAAK, L. Comparação esquemática dos sistemas regionais de direitos humanos: uma atualização. **Sur. Revista Internacional de Direitos Humanos**, v. 3, n. 4, p. 160-169, 2006. <https://doi.org/10.1590/S1806-64452006000100010>

HILLEBRECHT, C. **Domestic Politics and International Human Rights Tribunals: The Problem of Compliance**. Cambridge: Cambridge University Press, 2014.

HIRSCHL, R. **The Judicialization of Politics**. Oxford: Oxford Handbooks Online, 2013. <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199604456.001.0001/oxfordhb-9780199604456-e-013>.

HRW. **South Africa: LGBT Rights in Name Only?**. [S. l.]: HRW, 2011. <https://www.hrw.org/news/2011/12/05/south-africa-lgbt-rights-name-only>. Retrieved 19 June 2021.

IZUGBARA, C.; BAKARE, S.; SEBANY, M.; USHIE, B.; WEKESAH, F.; NJAGI, J. Regional legal and policy instruments for addressing LGBT exclusion in Africa. **Sexual and Reproductive Health Matters**, v. 28, n. 1, p. 99-112, 2020. <https://doi.org/10.1080/26410397.2019.1698905>



JOURNAL HEALTH AND TECHNOLOGY - JHT

ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

JESSON, J.; MATHESON, L.; LACEY, F. **Doing Your Literature Review?** Traditional and Systematic Techniques. London: SAGE, 2011.

JOBSON, G.; THERON, L.; KAGGWA, J.; KIM, H. Transgender in Africa: Invisible, inaccessible, or ignored?. **SAHARA-J: Journal of Social Aspects of HIV/AIDS**, v. 9, n. 3, p. 160-163, 2012. <http://dx.doi.org/10.1080/17290376.2012.743829>

KANG, M.; LESSARD, D.; HESTON, L.; NORDMARKEN, S. **Introduction to Women, Gender, & Sexuality Studies**. Amherst, MA: University of Massachusetts Amherst, 2017.

KERRIGAN, F. **Getting to Rights:** The rights of lesbian, gay, bisexual, transgender and intersex persons in Africa. [S. l.]: The Danish Institute for Human Rights, 2013. <https://gsdrc.org/document-library/getting-to-rights-the-rights-of-lesbian-gay-bisexual-transgender-and-intersex-persons-in-africa/>. Retrieved 7 August 2021.

KUFUOR, K. O. **The African Human Rights System:** Origin and Evolution. New York: Palgrave Macmillan, 2010.

LEXICO. **Judicialize** Lexico. Oxford: Oxford University, 2021. from <https://www.lexico.com/definition/judicialize>. Retrieved 2 October 2021.

LONDON, L. What is a human-rights based approach to health and does it matter?. **Health Hum Rights**, v. 10, n. 1, p. 65-80, 2008. <https://pubmed.ncbi.nlm.nih.gov/20845830/>. Retrieved 19 June 2021.

LORD, J.; GUERNSEY, K.; BALFE, J.; KARR, V.; DEFRANCO, A. **Human Rights. YES! Action and Advocacy on the Rights of Persons with Disabilities**. Minneapolis: University of Minnesota Human Rights Center, 2012.

LUHUR, W.; MOKGOROANE, L.; SHAW, A. **Public Opinion of Transgender Rights in South Africa**. Los Angeles: UCLA School of Law - Williams Institute, 2021. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Public-Opinion-Trans-South-Africa-Jun-2021.pdf>. Retrieved 5 September 2021.

LUVUNO, Z.; NCAMA, B.; MCHUNU, G. Transgender population's experiences with regard to accessing reproductive health care in Kwazulu-Natal, South Africa: A qualitative study. **African Journal of Primary Health Care & Family Medicine**, v. 11, n. 1, 2019. <https://doi.org/10.4102/phcfm.v11i1.1933>

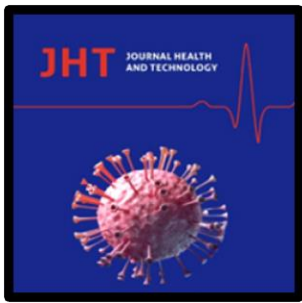
MADEIRA, L.; GELISKI, L. Judicialization of Human Rights and the Welfare State in Latin America: domestic and international courts. In: **Conference: International Meeting on Law and Society**. 2017. <http://dx.doi.org/10.13140/RG.2.2.34660.99207>. Retrieved 2 October 2021.

MASSOUD, M. The evolution of gay rights in South Africa. **Peace Review**, v. 15, n. 3, p. 301-307, 2003. <https://doi.org/10.1080/1040265032000130896>.

MEER, T.; MÜLLER, A. "They treat us like we're not there": Queer bodies and the social production of healthcare spaces. **Health & Place**, v. 45, p. 92-98, 2017. <https://doi.org/10.1016/j.healthplace.2017.03.010>

MEYER, I.; NORTHRIDGE, M. **The Health of Sexual Minorities:** Public Health Perspectives on Lesbian, Gay, Bisexual and Transgender Populations. New York: Springer, 2007.

MORAVCSIK, A. The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe. **International Organization**, v. 54, n. 2, p. 217-252, 2000. <https://doi.org/10.1162/002081800551163>



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

MÜLLER, A. Health for All? Sexual Orientation, Gender Identity, and the Implementation of the Right to Access to Health Care in South Africa. **Health Hum Rights**, v. 18, n. 2, p. 195–208, 2016. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5395001/>. Retrieved 19 June 2021.

MÜLLER, A. Scrambling for access: availability, accessibility, acceptability and quality of healthcare for lesbian, gay, bisexual and transgender people in South Africa. **BMC International Health and Human Rights**, v. 17, n. 1, 2017. <https://doi.org/10.1186/s12914-017-0124-4>

NGWENA, C. The Recognition of Access to Health Care as a Human Right in South Africa: Is It Enough?. **Health and Human Rights**, v. 5, n. 1, p. 26-44, 2000. <https://doi.org/10.2307/4065221>

NOTARO, S. **Marginality and Global LGBT Communities: Conflicts, Civil Rights and Controversy**. Cham: Palgrave Macmillan, 2020.

NWEZE, C. C. Justifiability or Judicialization: Circumventing Armageddon Through the Enforcement of Socio-Economic Rights. **African Yearbook of International Law Online**, v. 15, n. 1, p. 107-127, 2007. <https://doi.org/10.1163/22116176-90000041>

NYECK, S.; SHEPHERD, D. **The Economic Cost of LGBT Stigma and Discrimination in South Africa**. Los Angeles: UCLA School of Law - Williams Institute, 2019. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-LGBT-Discrimination-South-Africa-Dec-2019.pdf>. Retrieved 5 September 2021.

OAU. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58. **African (Banjul) Charter on Human and Peoples' Rights**, 1982. <https://www.achpr.org/legalinstruments/detail?id=49>. Retrieved 23 September 2021.

OHCHR. Fact Sheet No. 31. **The Right to Health**, 2008. <https://www.refworld.org/docid/48625a742.html>. Retrieved 23 September 2021.

OHCHR. **HIV/AIDS and Human Rights**. Geneva: United Nations, 2021. <https://www.ohchr.org/en/issues/hiv/pages/hivindex.aspx>. Retrieved 1 October 2021.

OHCHR. **Manual on human rights monitoring**. Chapter 31: Advocacy and intervention with the national authorities. Geneva: United Nations, 2011. <https://www.ohchr.org/Documents/Publications/Chapter31-24pp.pdf>. Retrieved 2 October 2021.

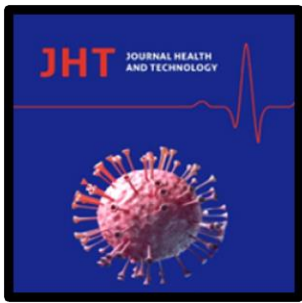
ONORIA, H. The African Commission on Human and Peoples' Rights and the exhaustion of local remedies under the African Charter. **African Human Rights Law Journal**, v. 3, n. 1, p. 1-24, 2021. <https://journals.co.za/doi/pdf/10.10520/EJC51973>. Retrieved 2 October 2021.

OUT. **Advocacy**. [S. l.]: OUT, 2021. <https://out.org.za/advocacy/>. Retrieved 2 October 2021.

PACHANKIS, J.; SAFREN, S. (eds.). **Handbook of Evidence - Based Mental Health Practice with Sexual and Gender Minorities**. New York: Oxford University Press, 2019.

PILLAY, R. South Africa still hasn't won LGBTQ+ equality. Here are 5 reasons why. **World Economic Forum**, 2018. <https://www.weforum.org/agenda/2018/11/south-africa-road-to-lgbtq-equality/>. Retrieved 5 September 2021.

RIBEIRO, L.; HARTMANN, I. Judicialization of the Right to Health and Institutional Changes in Brazil. **Revista de Investigações Constitucionais**, v. 3, n. 3, p. 35-52, 2016. <https://doi.org/10.5380/rinc.v3i3.48160>



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION, HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

ROBERTS, T.; FANTZ, C. Barriers to quality health care for the transgender population. **Clinical Biochemistry**, v. 47, n. 10-11, p. 983-987, 2014. <https://doi.org/10.1016/j.clinbiochem.2014.02.009>

SAFER, J.; COLEMAN, E.; FELDMAN, J.; GAROFALO, R.; HEMBREE, W.; RADIX, A.; SEVELIUS, J. Barriers to healthcare for transgender individuals. **Current Opinion in Endocrinology & Diabetes and Obesity**, v. 23, n. 2, p. 168-171, 2016. <https://doi.org/10.1097/med.0000000000000227>

SPENCER, S.; MEER, T.; MÜLLER, A. "The care is the best you can give at the time": Health care professionals' experiences in providing gender affirming care in South Africa. **PLOS ONE**, v. 12, n. 7, p. e0181132, 2017. <https://doi.org/10.1371/journal.pone.0181132>

SSENYONJO, M. Responding to Human Rights Violations in Africa. **International Human Rights Law Review**, v. 7, n. 1, p. 1-42, 2018. <https://doi.org/10.1163/22131035-00701003>

STEVENS, M. **Transgender access to sexual health services in South Africa: findings from a key informant survey**. Africa do Sul: Gender Dynamix, 2012. <https://genderdynamix.org.za.www53.jnb2.host-h.net/wp-content/uploads/2012/10/Transgender-access-to-sexual-health-services-in-South-Africa.pdf>. Retrieved 1 October 2021.

SULLIVAN, P.; PHASWANA-MAFUYA, N.; BARAL, S.; VALENCIA, R.; ZAHN, R.; DOMINGUEZ, K. *et al.* HIV prevalence and incidence in a cohort of South African men and transgender women who have sex with men: the Sibanye Methods for Prevention Packages Programme (MP3) project. **Journal of the International AIDS Society**, v. 23, n. S6, p. 6-16, 2020. <https://doi.org/10.1002/jia2.25591>

TASIOULAS, J. Saving Human Rights from Human Rights Law. **Vanderbilt Journal of Transnational Law**, v. 52, n. 4, p. 1167-1207, 2019. <https://www.corteidh.or.cr/tablas/libro6-68.pdf>. Retrieved 2 October 2021.

THORESON, R. **Transnational LGBT Activism: Working for Sexual Rights Worldwide**. Minneapolis, MN: University of Minnesota Press, 2014.

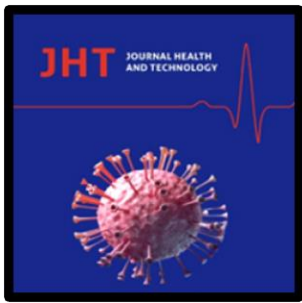
UN HUMAN RIGHTS. **Your Health, Your Choice, Your Rights: International and Regional Obligations on Sexual and Reproductive Health and Rights**. [S. l.]: UN HUMAN RIGHTS, 2018. <https://www.ohchr.org/Documents/Issues/Women/OHCHRFactsheetYourHealth.pdf>. Retrieved 20 June 2021.

VENTER, L. **LGBTQIA+ rights in South Africa**. International Bar Association, 2021. <https://www.ibanet.org/article/854B8E51-E931-403D-BDC3-1386B30F9591>. Retrieved 5 September 2021.

VILJOEN, F. Norms, case law and practices of sexual orientation and gender identity in the African human rights system. *In*: CENTRE FOR HUMAN RIGHTS, UNIVERSITY OF PRETORIA (ed.), **Ending Violence and other human rights violations based on sexual orientation and gender identity: A joint dialogue of the African Commission on Human and Peoples' Rights, Inter-American Commission on Human Rights and United Nations**. Republic of South Africa: Pretoria University Law Press, 2016.

WHO. **Human rights and health**. Geneva: WHO, 2017. <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>. Retrieved 23 September 2021.

WILSON, D.; MARAIS, A.; DE VILLIERS, A.; ADDINALL, R.; CAMPBELL, M.; UNIT, T. Transgender issues in South Africa, with particular reference to the Groote Schuur Hospital Transgender Unit. **South African Medical Journal**, v. 104, n. 6, p. 449, 2014. <http://dx.doi.org/10.7196/SAMJ.8392>



JOURNAL HEALTH AND TECHNOLOGY - JHT ISSN 2764-7625

HEALTH CARE ACCESS BY TRANSGENDER PERSONS IN SOUTH AFRICA: GENDER-BASED DISCRIMINATION,
HUMAN RIGHTS VIOLATIONS, AND THE ROLE OF THE AFRICAN HUMAN RIGHTS SYSTEM
Erick da Luz Scherf, Maria de Lourdes Alves Lima Zanatta, Marcos Vinicius Viana da Silva, Jose Everton da Silva

WINER, A. Levels of generality and the protection of lgbt rights before the united nations general assembly. **William Mitchell Law Review**, v. 41, n. 1, p. 80-129, 2015. <https://open.mitchellhamline.edu/facsch/265/>. Retrieved 5 September 2021.