

## Press Release: Victory for Jade September and the Transgender Community

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**For Immediate Release: 25 September 2019**

On Monday 23 September 2019, the Equality Court in the Western Cape handed down its judgment in the matter of September vs Subramoney N.O and Others. Ms. September is a transgender woman currently serving a prison sentence inside a male correctional facility. While incarcerated, prison officials denied her the right to express her gender through her hairstyle, dress, and use of small amounts of make-up. She has also been subject to verbal abuse and harassment from prison officials, and at one stage placed in segregated confinement after trying to express her gender.

Ms September sought relief from the Court for the violation of her fundamental constitutional rights to equality and human dignity, including an order that the respondents permit her to express her gender, and that her gender identity be respected and protected while incarcerated. Ms. September was represented by Lawyers for Human Rights, and her matter was heard on 26 and 27 November 2018. Gender Dynamix, represented by the Legal Resources Centre, were admitted as friends of the court.

We welcome and celebrate the judgment delivered by the Equality Court, which we believe is central to the promotion of the rights of transgender and gender diverse persons in South Africa. These classes of persons remain marginalised and ignored by the law and its application.

In a fundamental judgment, the Court held that refusal to allow a transgender person to express their gender identity is unfair discrimination that violates both the right to equality and section 8 of the Promotion of Equality and Prevention of Unfair Discrimination Act. The Court therefore ordered prison officials to allow Ms. September and others similarly placed to wear female underwear, keep her hair long and wear make-up, as well as address her as a woman and use female pronouns when referring to her. The Department of Correctional Services was also ordered to introduce transgender sensitivity training for current and new employees.

Critically, the Court reiterated that the incarceration of a person does not in any way excuse the State from fulfilling the obligation to respect, protect, promote and fulfil the rights of the applicants and others similarly placed. The Court emphasised the importance of the right to equality and how it links

with the ability to express one's gender identity. Further, the Court also correctly noted that Ms. September's case was not just about equality, but also included the rights to dignity, freedom of expression and dignified detention, among others. The court explained that the respect for dignity requires the recognition of and respect for the unique identity and expression of each individual. The right to dignity therefore includes the right to express one's gender identity.

The Court highlighted the linkages of the right to equality and the right to freedom of expression. The Court found that Ms. September had been denied her personal freedom to develop and express her gender identity which violated her right to freedom of expression. The court stressed that the infringement of freedom of expression is particularly severe when it is connected to other rights.

Importantly, the Court recognised the applicability of the [Yogyakarta Principles](#) and [Yogyakarta Principles Plus 10](#) to the South African human rights context, citing "*the obligation on the State to 'repeal any law that prohibits or criminalises the expression of gender identity, including through dress, speech or mannerisms, or that denies to individuals the opportunity to change their bodies as a means of expressing their gender identity'*" (Principle 6). The Court also emphasised the right to treatment with humanity while in detention (Principle 9), which says that the State must "*ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse*".

We welcome this groundbreaking judgement as it is an important development of the South African jurisprudence on the rights to gender identity and gender expression, and a significant step towards greater protection and realisation of the human rights of transgender and gender diverse people in South Africa. We urge all government departments to take note of this judgement and ensure that their laws, policies and practices comply with human rights standards on gender recognition for transgender and gender diverse persons.

**For more information, please contact:**

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