

OHCHR TECHNICAL NOTE ON THE HUMAN RIGHTS OF INTERSEX PEOPLE: HUMAN RIGHTS STANDARDS AND GOOD PRACTICES

INTRODUCTION

This technical note provides an overview of the international human rights norms and standards and relevant recommendations of United Nations human rights mechanisms and good practices¹ by States in relation to the human rights of intersex people². This includes extracts of outputs of United Nations human rights mechanisms, including Treaty Bodies, Special Procedures and the Office of the United Nations High Commissioner for Human Rights (OHCHR). This technical note is a resource for States and other stakeholders to support alignment between national legislation and international human rights norms and standards.

OVERVIEW OF HUMAN RIGHTS STANDARDS – HUMAN RIGHTS OF INTERSEX PEOPLE

Intersex persons, like all persons, are entitled to the protection, respect, and fulfilment of all of their human rights, as enshrined in the Universal Declaration of Human rights and core international human rights treaties including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities, among others.

Because their bodies are seen as different, intersex children and adults are often stigmatized and subjected to multiple human rights violations, including forced and coerced medical interventions, violence, infanticide and discrimination in education, health care, employment, sport and access to services. Intersex people can also face obstacles in legal recognition of their gender identities where these differ from the sex assigned to them at birth. They can also be faced with challenges in accessing medical records, due to retention and access policies that are not aligned with international standards, as well as in accessing justice and remedy for the violations they face. These practices undermine a variety of intersex people's rights, including rights to non-discrimination, equality before the law, equal recognition before the law, equal protection of the law, life, health, education, employment, bodily autonomy, physical and psychological integrity, right to participate in recreational activities, sports and all aspects of cultural life, right of the child to preserve their identity, freedom from torture and ill-treatment, access to justice and remedy.³

¹ The good practice examples contained in this technical note are based on a review of domestic legislation and jurisprudence. It is beyond the scope of this document to examine whether the application of the legislation or judgments cited is in alignment with the law adopted or decision issued. The translations contained in this document are unofficial.

² Intersex people are born with sex characteristics that do not fit typical definitions for male or female bodies, including sexual anatomy, reproductive organs, hormonal patterns, and/or chromosome patterns. Intersex people or their parents may become aware of variations in their sex characteristics at different times: at birth, during childhood, in puberty, or in adulthood. Intersex is an umbrella term used to describe a wide range of innate bodily variations in sex characteristics.

³ See: OHCHR, Background Note on Human Rights Violations against Intersex People (2019), <https://www.ohchr.org/en/documents/tools-and-resources/background-note-human-rights-violations-against-intersex-people> and the UN Free & Equal campaign factsheet on Intersex at <https://www.unfe.org/learn-more/>.

The rights of intersex people to live free from discrimination and violence (including in medical settings) have been affirmed by multiple United Nations (UN) bodies as well as regional human rights mechanisms from Africa, Europe and the inter-American system.⁴ States from all regions have also come together to call for increased action to promote and protect the human rights of intersex people.⁵

The key elements for laws on the protection of the human rights of intersex people to align with international human rights standards are that States:

- 1.** Prohibit forced or coerced medical interventions with respect to intersex characteristics, such as non-emergency medical interventions performed without full, free and informed consent.
- 2.** Combat infanticide and other forms of violence against intersex children.
- 3.** Ensure full and equal access to health care.
- 4.** Prohibit and combat discrimination against intersex persons, including in education, employment, healthcare settings, in recreational activities, sports and all aspects of cultural life, and access to services.
- 5.** Ensure access to justice and effective remedy.
- 6.** Provide persons full access to their own medical records.
- 7.** Ensure legal recognition of gender identities.

4 UN Committee against Torture, UN Committee on the Rights of the Child, Committee on the Rights of People with Disabilities; UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on violence against women, its causes and consequences; Special Representative of the UN Secretary-General on Violence against Children; Chairperson of the Committee for the Prevention of Torture in Africa of the African Commission on Human and Peoples' Rights; Commissioner for Human Rights of the Council of Europe; Inter-American Commission on Human Rights, End violence and harmful medical practices on intersex children and adults, UN and regional experts urge (2016), <https://www.ohchr.org/en/2016/10/intersex-awareness-day-wednesday-26-october>.

5 See for example, <https://www.bmeia.gv.at/oev-genf/speeches/alle/2021/10/united-nations-human-rights-council-48th-session-joint-statement-on-the-human-rights-of-intersex-persons/>.

KEY ELEMENTS FOR LAWS ON THE PROTECTION OF THE HUMAN RIGHTS OF INTERSEX PEOPLE

1. PROHIBIT FORCED OR COERCED MEDICAL INTERVENTIONS WITH RESPECT TO INTERSEX CHARACTERISTICS, SUCH AS NON-EMERGENCY MEDICAL INTERVENTIONS PERFORMED WITHOUT FULL, FREE AND INFORMED CONSENT

HUMAN RIGHTS STANDARDS

Right to health, physical and psychological integrity, freedom from torture and ill-treatment.

EXAMPLES OF HUMAN RIGHTS RECOMMENDATIONS

UN Human Rights Committee:

The State party should take appropriate steps to [...] **strengthen measures to end the performance of irreversible medical acts, especially surgical operations, on intersex children** who are not yet capable of giving their full, free and informed consent, except in cases where such interventions are absolutely necessary for medical reasons. Access to effective remedies for victims of such interventions should also be ensured.⁶

UN Committee against Torture:

The Committee recommends that the State party: **Take the necessary legislative, administrative and other measures to guarantee respect for the physical integrity of intersex individuals**, so that no one is subjected during childhood to non-urgent medical or surgical procedures intended to establish one's sex; [...] Ensure that no surgical procedure or medical treatment is carried out without the person's full, free and informed consent and without the person, their parents or close relatives being informed of the available options, including the possibility of deferring any decision on unnecessary treatment until they can decide for themselves.⁷

UN Committee on the Rights of the Child:

With reference to its general comment No. 18 (2014) on harmful practices, the Committee recommends that the State party: [...] c) **Ensure that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to children concerned** and provide families with intersex children with adequate counselling and support; (d) **Provide redress** to the victims of such treatment; (e) **Educate medical and psychological professionals** on the range of sexual, and related biological and physical diversity and on the consequences of unnecessary interventions for intersex children.⁸

6 See [CCPR/C/KEN/CO/4 \[CCPR 2021\]](#), para. 13(e).

7 See [CAT/C/FRA/CO/7 \[CAT 2016\]](#), para. 34, 35.

8 See [CRC/C/GBR/CO/5 \[CRC 2016\]](#), para. 47c, d, e.

UN Committee on the Rights of Persons with Disabilities:⁹

The Committee urges the State party to [...] **adopt clear legislative provisions that explicitly prohibit the performance of unnecessary, invasive and irreversible medical interventions**, including surgical, hormonal or other medical procedures on intersex children before an age at which they can provide informed consent.¹⁰

UN Committee on the Elimination of Discrimination Against Women:

The Committee recommends that the State party **adopt provisions explicitly prohibiting the performance of unnecessary surgical or other medical procedures** on intersex children **until they reach an age when they can give their free, prior and informed consent** and provide families of intersex children with adequate counselling and support.¹¹

UN Joint Statement on Eliminating forced coercive or otherwise involuntary sterilization (2014):

It has been recommended by human rights bodies, professional organizations and ethical bodies that **full, free and informed consent should be ensured in connection with medical and surgical treatments for intersex persons and, if possible, irreversible invasive medical interventions should be postponed until a child is sufficiently mature to make an informed decision, so that they can participate in decision-making and give full, free and informed consent**. It has also been recommended that health-care professionals should be educated and trained about bodily diversity as well as sexual and related biological and physical diversity, and that professionals should properly inform patients and their parents of the consequences of surgical and other medical interventions.¹²

EXAMPLES OF GOOD PRACTICES

In Australia, the federal Human Rights Commission (2021) has called for legislative reform to protect the bodily integrity of people born with variations of sex characteristics in medical settings, and provide for resourced peer and family support, and independent oversight.¹³ In 2023, the Government of the Australian Capital Territory passed legislation to protect the human rights of people with variations of sex characteristics in medical settings.¹⁴ It creates an oversight body to regulate non-urgent medical interventions. The legislation is accompanied by significant investment in psychosocial support for individuals and their families.

In 2022, Greece enacted protections in Law No. 4958/2022 Government Gazette 142/A/21-7-2022 “Reforms in medically assisted reproduction and other urgent regulations”, prohibiting medical

⁹ The stigmatization of intersex bodies shares many commonalities with stigmatization faced by persons with disabilities. This is due to the historical dominance of the medical model of disability which seeks to “cure” or “correct” children and adults with disabilities. In this respect, both intersex people and persons with disabilities face forced and coercive medical interventions, sterilization and discrimination based on physical and genetic differences. There are also overlaps between both populations as intersex individuals may have chronic conditions or impairments due either to their innate characteristics or as a consequence of medically unnecessary surgery and other treatment performed on them without their informed consent. Many intersex organizations and experts have highlighted the relevance and applicability of the social model of disability to intersex people, which focuses on barriers within society as the source of disadvantage and discrimination, rather than on an individual’s particular characteristics. However, some intersex organizations have expressed caution about positioning intersex issues mainly or solely within the framework of the rights of persons with disabilities, including fears about exacerbating stigma faced by intersex people.

¹⁰ See [CRPD/C/NZL/CO/2-3](#) (2022), para. 36(b). See also [CRPD/C/FRA/CO/1](#) (2021), para. 37(c); [CRPD/C/CHE/CO/1](#) (2022), para. 36(c); [CRPD/C/IND/CO/1](#) (2019), para. 37(c).

¹¹ See CEDAW, [CEDAW/C/MEX/CO/9 \(CEDAW 2018\)](#), para. 22.

¹² See OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF, WHO (2014). [Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement](#), ps. 7-8.

¹³ See <https://humanrights.gov.au/intersex-report-2021>.

¹⁴ See <https://www.cmtedd.act.gov.au/policystrategic/the-office-of-lgbtiq-affairs/protecting-the-rights-of-people-with-variations-in-sex-characteristics-in-medical-settings>.

interventions on intersex minors under the age of 15. Interventions may only take place with court-granted permission for “medical procedures or treatments that cannot be postponed until the minor reaches the age of fifteen (15) and do not cause other future, irreversible or significant complications to the health of the minor.”¹⁵

Iceland’s Gender Autonomy Act (2020) takes measures to protect the physical integrity of children born with atypical sex characteristics and provides for the implementation of an interdisciplinary committee of experts for their treatment. Under the law, unless required for health reasons, “permanent changes to the sex characteristics of a child under the age of 16 born with atypical sex characteristics shall only be made in conformity with the will of the child and its level of gender identity, and always with the best interests of the child in mind.” Social, psychosocial and appearance-related reasons are not accepted as justifications for medical intervention. Although exceptions were made for two types of medical intervention, the provisions are subject to a legislative review after three years.¹⁶

In India, the Government of Tamil Nadu decided in 2019 to ban surgeries aimed at amending the sex characteristics of intersex infants and children, with an exception for life-threatening situations.¹⁷ In addition, the Delhi High Court ordered the Government of Delhi in 2022¹⁸ to decide on a recommendation by the Delhi Commission for Protection of Child Rights to ban medically unnecessary sex-selective surgeries on intersex infants except in cases of life-threatening situations.¹⁹

Malta’s Gender Identity, Gender Expression and Sex Characteristics Act (2015) Article 14 (1): “It shall be unlawful for medical practitioners or other professionals to conduct any sex assignment treatment and, or surgical intervention on the sex characteristics of a minor which treatment and, or intervention can be deferred until the person to be treated can provide informed consent.” Violation of this Article is punishable by imprisonment not exceeding five years or a fine between 5,000 and 20,000 EUR.²⁰

In 2018, Portugal adopted Law no. 38/2018 on the right to self-determination of gender identity and gender expression and protection of one’s sexual characteristics, which affirmed that “all persons have the right to maintain their primary and secondary sex characteristics”, and that “except in situations of proven risk to their health, surgical, pharmacological, or other treatments and interventions that imply modifications to the body and sexual characteristics of the intersex minor should not be performed until their gender identity is manifested.”²¹

In 2023, Spain adopted the Law for the real and effective equality of trans people and for the guarantee of the rights of LGBTI people, which prohibits “all genital modification practices on persons under the age of twelve, except in cases where medical indications require otherwise in order to protect the health of the person. In the case of minors between twelve and sixteen years of age, such practices shall only be permitted at the request of the minor, provided that, due to the minor’s age and maturity, the minor is able to give informed consent to the performance of such practices.” The participation of minors shall be guaranteed, as far as possible, in the decision-making process.

15 See <https://www.e-nomothesia.gr/kat-yegeia/tekhnete-gonimopoiese/nomos-4958-2022-phek-142a-21-7-2022.html> with translation into English by Nikoletta Pikramenou at <https://intersexgreece.org.gr/en/2022/07/25/3449/>.

16 See https://www.government.is/library/04-Legislation/Act%20on%20Gender%20Autonomy%20No%2080_2019.pdf.

17 See, <https://translaw.clpr.org.in/wp-content/uploads/2020/10/Tamil-Nadu-GO-Intersex-Surgery.pdf>.

18 See *Srishti Madurai Educational Research Foundation vs. Govt. of NCT of Delhi & Ors*, W.P.(C) 8967/2021, 27 July 2022, https://www.verdictum.in/pdf_upload/165900532250223767-1396801.pdf.

19 See Delhi Commission for Protection of Child Rights, *Recommendation regarding ban on medically unnecessary, sex selective surgeries on intersex infants and children except in case of life threatening situations*, 13 January 2021, https://dcpcr.delhi.gov.in/sites/default/files/DCPCR/pdf_files/intersex_order_dispatched_2.pdf.

20 See Gender Identity, Gender Expression and Sex Characteristics Act (2015) available <https://legislation.mt/eli/cap/540/eng/pdf>.

21 See <https://dre.pt/dre/detalhe/lei/38-2018-115933863>.

The law also calls for protocols on the provision of advice and support, including psychological support, to intersex minors and their families.²²

Uruguay's Law on Gender Based Violence Against Women (2017) calls for the prohibition of unnecessary medical procedures on intersex children and adolescents.²³

22 Spain, Law 4/2023, of 28 February, [for the real and effective equality of trans people and for the guarantee of the rights of LGBTI people](#), Art. 19.

23 See <https://www.impo.com.uy/bases/leyes/19580-2017>, Art. 22(I).

2. COMBAT INFANTICIDE AND OTHER FORMS OF VIOLENCE AGAINST INTERSEX CHILDREN

HUMAN RIGHTS STANDARDS

Rights to life, freedom from torture and ill-treatment, non-discrimination.

EXAMPLES OF HUMAN RIGHTS RECOMMENDATIONS

UN Human Rights Committee:

The Committee is concerned about [...] Cases of [...] **infanticide** and abandonment among intersex children. [...] The State party should take appropriate steps to: [...] Address discriminatory attitudes and stigma towards [...] intersex persons among the general public, including through comprehensive awareness-raising and sensitization activities.²⁴

UN Committee on the Elimination of Discrimination Against Women:

The Committee [expresses concern about] discrimination against intersex persons, namely, abuse, reported infanticide, forced marriage and the conduct of medically unnecessary procedures [...] The Committee recommends that the State party [...] expedite the **adoption of legislation** prohibiting all forms of harmful traditional practices, **investigate and prosecute the perpetrators of such practices, impose adequate sanctions and provide compensation to victims.**²⁵

UN Special Rapporteur on extrajudicial executions:

Noting that [...] intersex persons are particularly exposed to violence and killings by both State and non-State actors, States should [...] **address impunity for murders** of [...] intersex persons.²⁶

EXAMPLES OF GOOD PRACTICES

In Kenya, the National Commission on Human Rights (KNCHR) published a report in 2018 on the rights of intersex people, which recognised “an urgent need for the government to investigate the frequency and the cause of intersex child deaths due to medical neglect and infanticide, and to develop a strategy to preserve this most basic right, the right to life.”²⁷

The KNCHR report recommended, inter alia, that “The National Crime Research Centre in conjunction with the police to carry out a nation-wide study on the issue of intersex infanticide and child abuse in order to assess the scope of the problem and come up with a strategy to protect these vulnerable children.”²⁸

24 See [CCPR/C/KEN/CO/4 \(CCPR 2021\)](#), para. 12 (e), 13.

25 See [CEDAW/C/NPL/CO/6 \(CEDAW 2018\)](#), para. 18 (c).

26 Report of the Special Rapporteur on extrajudicial executions ([A/HRC/35/23](#), 2017), para. 110.

27 [https://www.knchr.org/Portals/0/GroupRightsReports/Equal%20In%20Dignity%20and%20Rights Promoting%20The%20Rights%20Of%20Intersex%20Persons%20In%20Kenya.pdf?ver=2018-06-06-161118-323](https://www.knchr.org/Portals/0/GroupRightsReports/Equal%20In%20Dignity%20and%20Rights%20Promoting%20The%20Rights%20Of%20Intersex%20Persons%20In%20Kenya.pdf?ver=2018-06-06-161118-323).

28 Ibid.

3. ENSURE FULL AND EQUAL ACCESS TO HEALTH CARE

HUMAN RIGHTS STANDARDS

Rights to health, non-discrimination, physical and psychological integrity.

EXAMPLES OF HUMAN RIGHTS RECOMMENDATIONS

UN Committee on Economic, Social and Cultural Rights:

The Committee recommends that the State party [...] **Adopt a policy and institutional framework** for ensuring that appropriate health services are available to intersex persons.²⁹

UN Committee on the Elimination of Discrimination Against Women:

The Committee recommends the State party to: [...] **provide adequate counselling and support for the families of intersex children.**³⁰

UN Committee on the Elimination of Discrimination Against Women:

The Committee recommends the State party to: [...] **develop and implement a rights-based health-care protocol for intersex women.**³¹

UN Committee on the Rights of Persons with Disabilities:

The Committee urges the State party to [...] recalling previous recommendations made by the Committee on the Rights of the Child, **develop and implement a child rights-based health-care protocol for intersex children**, setting the procedures and steps to be followed by health teams, ensuring that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guaranteeing the rights of children to bodily integrity, autonomy and self-determination, and **provide families with intersex children with adequate counselling and support.**³²

UN Committee on the Rights of Persons with Disabilities:

The Committee recommends that the State party [...] **provide adequate counselling and support for families of intersex children;** [...] and provide health care and psychosocial support to intersex persons who have been subjected to intersex genital mutilation.³³

UN Special Rapporteur on Health:

Non-discrimination requires substantive equality as well, and thus the **specific health needs and barriers** faced by [...] intersex persons [...] must be addressed and differential treatment provided.³⁴

Joint statement of UN and regional human rights mechanisms (2016):

[Intersex people] should have **access to support as well as to medical services that respond to their specific health needs** and that are based on non-discrimination, informed consent and respect for their fundamental rights.³⁵

29 See [E/C.12/ARG/CO/4 \(CESCR 2018\)](#).

30 See [CEDAW/C/AUS/CO/8 \(CEDAW 2020\)](#) para 26 (c).

31 See [CEDAW/C/BGR/CO/8 \(CEDAW 2020\)](#) para 34 (e).

32 See [CRPD/C/NZL/CO/2-3 \(2022\)](#), para. 36(c).

33 See [CRPD/C/CHE/CO/1 \(2022\)](#), para. 36(c).

34 See [A/76/172](#), para. 21.

35 See UN Committee against Torture (CAT); UN Committee on the Rights of the Child (CRC); UN Committee on the Rights of People with Disabilities (CRPD); UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT); Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on violence

EXAMPLES OF GOOD PRACTICES

In Australia, the Government of the Australian Capital Territory undertook consultations between 2020 and 2023 leading to legislation to improve the health and wellbeing of people with variations in sex characteristics and upholding their human rights in medical settings. This development is accompanied by significant new resourcing for psychosocial, peer and family support.³⁶

In Colombia, the City of Bogotá commissioned a study to better understand the situation of intersex people and to guide institutional actions to meet the needs of intersex people and guarantee access to their rights. The 2012 study recommended the creation of a health care plan for intersex people in the district, guaranteeing adequate coverage for this population, attending to their particular needs, and providing comprehensive treatment if needed while respecting the right to make decisions about their own bodies. It further recommended trainings and the provision of guidelines for health care workers, and the provision of information on intersex conditions for intersex people and their families.³⁷

The Government of New Zealand allocated funding in its 2022 budget to support health practitioners to provide best practice health care to intersex children and young people and to empower intersex children and young people and their whanau (family) to make informed decisions about medical interventions.³⁸

In Spain, the 2023 Law for the real and effective equality of trans people and for the guarantee of the rights of LGBTI people notes that the “health care of intersex persons shall be carried out in accordance with the principles of non-pathologization, autonomy, informed decision and consent, non-discrimination, comprehensive care, quality, specialization, proximity and non-segregation. In all cases, respect for their privacy and confidentiality regarding their physical characteristics shall be ensured, avoiding unnecessary explorations or their exposure without a directly related diagnostic or therapeutic objective. In calling for protocols guaranteeing, as far as possible, the participation of minors in the decision-making process, the law emphasises that “before the start of any treatment that could compromise their reproductive capacity, it shall be guaranteed that intersex persons have the real and effective possibility of accessing the techniques of freezing gonadal tissue and reproductive cells for their future recovery under the same conditions as other users.” Protocols should also be developed on the provision of advice and support, including psychological support, to intersex minors and their families, and “public administrations, within the scope of their competences, shall guarantee sufficient, continuous and updated training for health personnel, taking into account the specific needs of intersex persons.”³⁹

against women, its causes and consequences; Special Representative of the UN Secretary-General on Violence against Children; Chairperson of the Committee for the Prevention of Torture in Africa of the African Commission on Human and Peoples’ Rights (ACHPR); Commissioner for Human Rights of the Council of Europe; Inter-American Commission on Human Rights (IACHR), <https://www.ohchr.org/en/2016/10/intersex-awareness-day-wednesday-26-october>.

36 <https://www.cmtedd.act.gov.au/policystrategic/the-office-of-lgbtiq-affairs/variations-in-sex-characteristics-bill>.

37 https://www.sdp.gov.co/sites/default/files/diagnostico_personas_intersexuales.pdf.

38 <https://www.budget.govt.nz/budget/pdfs/wellbeing-budget/b22-wellbeing-budget.pdf>, p. 121.

39 Spain, Law 4/2023, of 28 February, [for the real and effective equality of trans people and for the guarantee of the rights of LGBTI people](#), Art. 19.

4. PROHIBIT AND COMBAT DISCRIMINATION AGAINST INTERSEX PERSONS, INCLUDING IN EDUCATION, EMPLOYMENT, HEALTHCARE SETTINGS, IN RECREATIONAL ACTIVITIES, SPORTS AND ALL ASPECTS OF CULTURAL LIFE, AND ACCESS TO SERVICES

HUMAN RIGHTS STANDARDS

Rights to non-discrimination, health, bodily autonomy, physical and psychological integrity, education, employment, right to participate recreational activities, sports and all aspects of cultural life, equality before the law.

EXAMPLES OF HUMAN RIGHTS RECOMMENDATIONS

UN Human Rights Committee:

The State party should redouble its efforts to combat stereotypes and prejudice against [...] intersex persons and should ensure that the gap between legislation and practice is effectively addressed, in particular in regard to **education, health, the workplace and the public space**.⁴⁰

UN Committee on Economic, Social and Cultural Rights:

The Committee recommends the State party to [...] **Conduct awareness-raising campaigns targeting the public, health-care providers, and law enforcement and other public officials to eliminate negative stereotypes and stigma** against members of marginalized groups, such as [...] intersex persons.⁴¹

UN Committee on the Elimination of Discrimination Against Women:

Recalling its general recommendation No. 36 (2017) on the right of girls and women to education, the Committee recommends that the State party promote the importance of girls' education at all levels as a basis for their empowerment, and recommends that the State party: [...] Develop policies to **end discrimination in schools** against [...] **intersex students to ensure that they can successfully complete their education**.⁴²

UN Special Rapporteur on the Right to Health:

Sporting organizations must implement policies in accordance with human rights norms and refrain from introducing policies that force, coerce or otherwise pressure women athletes into undergoing unnecessary, irreversible and harmful medical procedures in order to participate as women in competitive sport. States should also adopt legislation incorporating international human rights standards to **protect the rights of intersex persons at all levels of sport**, given that they frequently report bullying and discriminatory behaviour, and should take steps to protect the health rights of intersex women in their jurisdiction from interference by third parties.⁴³

Joint statement of UN and regional human rights mechanisms (2016):

Ending these abuses will also require States to raise awareness of the rights of intersex people, to **protect them from discrimination** on ground of sex characteristics, including in access to **health**

40 CCPR/C/URY/CO/6 (CCPR 2022), para. 11. See also [CCPR/C/MEX/CO/6 \[CCPR 2019\]](#), para. 13.

41 [E/C.12/UZB/CO/3 \[CESCR 2022\]](#).

42 [CEDAW/C/DOM/CO/8 \[CEDAW 2022\]](#), para. 32. See also [CEDAW/C/MEX/CO/9 \[CEDAW 2018\]](#), para. 12(d).

43 Report of the Special Rapporteur on Health, 'Sport and healthy lifestyles as contributing factors to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' ([A/HRC/32/33](#), 2016), para. 57.

care, education, employment, sports and in obtaining official documents, as well as special protection when they are deprived of liberty.⁴⁴

UN Office of the High Commissioner on Human Rights:

States have obligations to remove obstacles for women and girls in accessing sport [...] To this end, **they should address discrimination in sport** on the basis of gender, race and other grounds by: [...] **Ensuring that their national anti-discrimination law is adequate to address discrimination** [...] including discrimination on the basis of particular intersex variations or on the basis of sex characteristics. Such domestic law, in conformity with international human rights obligations, needs to be applicable to and in practice be applied to sport governing bodies.⁴⁵

EXAMPLES OF GOOD PRACTICES

In 2013, Australia amended the Sex Discrimination Act 1984 to include “protection from discrimination on the grounds of intersex status.”⁴⁶ Under the Fair Work Act 2009 (as amended in 2022), “An employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because of the person’s ... intersex status...”⁴⁷

In Kenya, the Children Act 2022 affirms that “An intersex child shall have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, education, training and consideration as a special need category in social protection services.”⁴⁸

In 2015, Malta enacted legislation that protects all people, including intersex people, from discrimination and forced and coercive medical interventions on grounds of sex characteristics. The legislation states that: “The public service has the duty to ensure that unlawful [...] sex characteristics discrimination and harassment are eliminated, whilst its services must promote equality of opportunity to all, irrespective of [...] sex characteristics.”⁴⁹

In Mexico, Art. 4(C(2)) of the Constitution of Mexico City (2017) states that “Any form of discrimination, whether formal or de facto, which offends against human dignity or has the purpose or effect of denying, excluding, distinguishing, impairing, impeding or restricting the rights of persons shall be prohibited”, including discrimination based on sex characteristics.⁵⁰ In 2020, Mexico City’s National Council to Prevent Discrimination (CONRAD), in collaboration with Brújula Intersexual, carried out a national survey on discrimination and violence against intersex people.⁵¹

In 2023, Portugal adopted a Guide entitled “The Right to BE in Schools: Guidelines to prevent and combat discrimination and violence based on sexual orientation, gender identity, gender expression and sexual characteristics in the school context”, which will be complemented with training, dissemination

44 See CAT; CRC; CRPD; SPT; Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on violence against women, its causes and consequences; Special Representative of the UN Secretary-General on Violence against Children; ACHPR; CoE; IACHR, <https://www.ohchr.org/en/2016/10/intersex-awareness-day-wednesday-26-october>.

45 Report of the United Nations High Commissioner for Human Rights on the ‘Intersection of race and gender discrimination in sport’, [A/HRC/44/26 \(2020\)](https://www.ohchr.org/en/2020/04/a-hrc-44-26-2020).

46 See “[Sex Discrimination Amendment \(Sexual Orientation, Gender Identity and Intersex Status\) Act 2013, No. 98, 2013, C2013A00098](https://www.comlaw.gov.au/Details/C2013A00098)” ([comlaw.gov.au](https://www.comlaw.gov.au/)).

47 See [Fair Work Act 2009](https://www.fairwork.gov.au/legislation/instruments/2022-07-12-1) (as amended in 2022), Art. 351(1).

48 Kenya Gazette Supplement No. 119 (Acts No. 29), 12 July 2022.

49 See [Gender Identity, Gender Expression and Sex Characteristics Act](https://www.kenya.go.ke/legislation/acts/2015/132) (2015), para. 13(2).

50 See https://urbanlex.unhabitat.org/sites/default/files/urbanlex//mexico_city_constitution_spanish.pdf.

51 See [http://www.conapred.org.mx/userfiles/files/Resumen_Ejecutivo_11-12-2020.pdf](https://www.conapred.org.mx/userfiles/files/Resumen_Ejecutivo_11-12-2020.pdf) and https://brujulaintersexual.files.wordpress.com/2021/03/02a_discrimination-and-violence-against-intersex-individuals-translation-.pdf.

and awareness actions in schools. The Guide contains measures that guarantee, in a school context, the application of Law no. 38/2018, of 7 August, which establishes the right to self-determination of gender identity and gender expression and the right to the protection of the sexual characteristics of each person.⁵²

In South Africa, the Judicial Matters Amendment Act, 2005 (Act 22 of 2005) amended the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000) to include intersex within its definition of sex.⁵³

Spain's 2023 Law for the real and effective equality of trans people and for the guarantee of the rights of LGBTI people, which states that intersex persons have the right "to receive comprehensive and adequate attention to their health, labour and educational needs, among others, in effective equality of conditions and without discrimination compared to other citizens." The law also calls for information programs in the educational environment, targeting students, their families and the staff of educational facilities, to combat discrimination against LGBTI persons and their families, with special attention to the reality of intersex persons. The law encourages that these programs be carried out in collaboration with the organizations representing the interests of LGBTI people.⁵⁴

52 See https://www.dge.mec.pt/sites/default/files/idahot_orientacoes_para_uma_escola_inclusiva.pdf.

53 See Alteration of Sex Description and Sex Status Act, 2003 (Act 49 of 2003). "[Judicial Matters Amendment Act, No. 22 of 2005, Republic of South Africa, Vol. 487, Cape Town](#)" ([justice.gov.za](#)).

54 Spain, Law 4/2023, of 28 February, [for the real and effective equality of trans people and for the guarantee of the rights of LGBTI people](#), Art. 74(1)(a) and 24.

5. ENSURE ACCESS TO JUSTICE AND EFFECTIVE REMEDY

HUMAN RIGHTS STANDARDS

Rights to access to justice and remedy, non-discrimination, health, physical and psychological integrity.

EXAMPLES OF HUMAN RIGHTS RECOMMENDATIONS

UN Human Rights Committee:

The State party should take appropriate steps to [...] Effectively prevent the performance of irreversible medical interventions, especially surgical operations, on intersex children who are not yet capable of giving their full, free and informed consent, unless such procedures constitute an absolute medical necessity, and **ensure access to effective remedies for victims of such interventions**.⁵⁵

The State party should also ensure that all victims have **access to remedies**, including through a revision of the application of statutes of limitation for violations in childhood, taking steps to ensure that all victims have access to their health records and considering the establishment of a dedicated compensation fund.⁵⁶

UN Committee against Torture:

The State party should: [...] **Undertake investigation** of instances of surgical interventions or other medical procedures performed on intersex persons without effective consent and prosecute and, if found responsible, punish perpetrators. It should also **ensure that the victims are provided with redress including adequate compensation**.⁵⁷

UN Committee on the Rights of the Child:

The Committee recommends that the State party [...] **Undertake investigation** of incidents of surgical and other medical treatment of intersex people without effective consent and **adopt legal provisions in order to provide redress** to the victims of such treatment, including **adequate compensation**.⁵⁸

UN Committee on the Elimination of Discrimination Against Women:

The Committee recommends that the State party [...] Adopt clear legislative provisions that explicitly prohibit the performance of unnecessary surgical or other medical procedures on intersex children before they reach the legal age of consent [...] and **provide redress** to intersex persons having undergone such medical procedures.⁵⁹

UN Committee on the Rights of Persons with Disabilities:

The Committee recommends that the State party [...] **extend the statute of limitations to enable criminal and civil remedies**.⁶⁰

55 See [CCPR/C/FIN/CO/7 \[CCPR 2021\]](#), para. 21.

56 See [CCPR/C/DEU/CO/7 \[CCPR 2021\]](#), para. 21.

57 See [CAT/C/NLD/CO/7 \[CAT 2018\]](#), para. 53(d). See also [CAT/C/DEU/CO/5 \[CAT 2011\]](#), para. 20 (b).

58 See [CRC/C/GBR/CO/5 \[CRC 2016\]](#), para. 46 (b).

59 See [CEDAW/C/AUS/CO/8 \[CEDAW 2020\]](#), para 26 (c).

60 See [CRPD/C/CHE/CO/1 \(2022\)](#), para. 36(c).

The Committee urges the State party to [...] **adopt legal provisions to provide legal remedies and holistic redress** to victims of medical interventions performed without personal consent, including access to support and recovery services and adequate compensation.⁶¹

UN Office of the High Commissioner for Human Rights:

States have a duty to **address impunity** for abuses, including by repealing all laws or policies that allow, justify or condone violence and discrimination against LGBTI people. States must also **exercise due diligence** and **independently, promptly and thoroughly investigate** all forms of abuse by State and non-State actors and **bring perpetrators to justice**. States have an obligation to construct a legal and institutional framework, and procedures, which facilitate **access to independent and effective judicial mechanisms** and ensure a **fair outcome for those seeking redress**, without discrimination of any kind.⁶²

EXAMPLES OF GOOD PRACTICES

In Germany, the Cologne Regional Court held in the case of *In re Völling* (6 February 2008), that a person had not been properly informed about the “nature, content and extent” of a surgery that removed organs, who was awarded EUR 100,000 in damages.⁶³

In 2021 the Government of the Netherlands issued an official apology for coerced surgeries and sterilizations performed on intersex people who have changed sex markers in identity documents.⁶⁴

61 See [CRPD/C/NZL/CO/2-3](#) (2022), para. 36(e).

62 OHCHR, [Born Free & Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law](#) (Second Edition), 2019, p. 71-72.

63 <https://www.icj.org/wp-content/uploads/2008/02/In-re-Volling-Regional-Court-Cologne-Germany-English.pdf>.

64 <https://www.debrauw.com/articles/dutch-government-apologises-to-transgender-and-intersex-community-for-law-requiring-sterilisation>.

6. PROVIDE PERSONS FULL ACCESS TO THEIR OWN MEDICAL RECORDS

HUMAN RIGHTS STANDARDS

Rights to health, bodily autonomy, physical and psychological integrity.

EXAMPLES OF HUMAN RIGHTS RECOMMENDATIONS

UN Human Rights Committee:

States should take steps to ensure that all intersex persons who are victims of medical interventions performed without their free and informed consent have **access to their health records**.⁶⁵

States should see to it that **medical records are accessible to intersex persons**.⁶⁶

UN Committee on the Elimination of Discrimination against Women:

States have a duty to adopt specific measures aimed at providing all victims of forced sterilizations with assistance to **access their medical records**.⁶⁷

States should provide all victims in cases of coercive or non-consensual sterilizations with assistance in gaining **access to their medical records**.⁶⁸

UN Committee against Torture:

The Committee expressed **concern regarding the destruction of medical records** on involuntary sterilizations.⁶⁹

UN Committee on the Rights of Persons with Disabilities:

The Committee urges the State party to [...] develop measures to **ensure reporting and data collection** on [...] non-urgent medical interventions performed on intersex children.⁷⁰

UN Special Rapporteur on the right to privacy:

The expert recommends that States take all measures necessary to **ensure that systems, procedures, records and data collection reflect all medical or other treatments** [...] on intersex children.⁷¹

Joint statement of UN and regional human rights mechanisms (2016):

Among the profound negative impacts of often irreversible procedures on intersex persons, experts noted that in many cases intersex people do not even have **access to their own medical records**.⁷²

65 See [CCPR/C/DEU/CO/7](#) (2021), para. 21.

66 See [CCPR/C/CHE/CO/4](#) (2017), para. 25.

67 See [CEDAW/C/NAM/CO/4-5](#) (2015), para. 37.

68 See [CEDAW/C/CZE/CO/6](#) (2016), para. 29; [CEDAW/C/CZE/CO/5](#), para. 35.

69 See [CAT/C/CZE/CO/4-5](#) (2012), para. 12.

70 See [CRPD/C/NZL/CO/2-3](#) (2022), para. 36(f).

71 See [A/HRC/43/52](#) (2021), para. 41.

72 See CAT; CRC; CRPD; SPT; Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on violence against women, its causes and consequences; Special Representative of the UN Secretary-General on Violence against Children; ACHPR; CoE; IACHR, <https://www.ohchr.org/en/2016/10/intersex-awareness-day-wednesday-26-october>.

EXAMPLES OF GOOD PRACTICES

Germany's Act on the Protection of Children with Variations in Sex Development extends the retention period for medical records for treatment of children with variants of sex development until the age of 48.⁷³

Iceland's Gender Autonomy Act (2020) states that health care professionals who provide treatment that permanently changes sex characteristics of children shall enter information on the treatment into the health record.⁷⁴

In Kenya, the Human Rights Commission has stated, in the context of intersex persons being denied access to medical records, that health care providers "have a duty to give full access to information."⁷⁵

New Zealand's Privacy Commissioner has stated that "patients have a right to access their own personal information. This is no different for intersex people. (...) Any retention policy should take into account the importance of not disposing of information before the individual has had opportunity to understand their situation and seek their records. We would also suggest that other treatment records, including non-surgical intervention, should as best practice be kept for an extended period of time at least until the patient is able to request access to their own records as an adult. Intersex patients may face issues related to their condition well into adulthood, which can only be understood and properly treated with access to and understanding of their full health information."⁷⁶

73 See <https://dip.bundestag.de/vorgang/gesetz-zum-schutz-von-kindern-mit-varianten-der-geschlechtsentwicklung/267726>, Art. 1.

74 See https://www.government.is/library/04-Legislation/Act%20on%20Gender%20Autonomy%20No%2080_2019.pdf, Art.

11(a), creating an exemption to Art. 14(3) of the [Health Records Act No 55/2009](#).

75 Kenya National Commission on Human Rights, Equal in Dignity and Rights: Promoting the Rights of Intersex Persons In Kenya (2018), p. 34, <http://www.knchr.org/Publications/Thematic-Reports/Group-Rights/Rights-of-Sexual-Minorities>.

76 Office of the Privacy Commissioner, Handling Health Information of Intersex Individuals, <https://www.privacy.org.nz/blog/handlinghealth-information-of-intersex-individuals/>.

7. ENSURE LEGAL RECOGNITION OF GENDER IDENTITIES

HUMAN RIGHTS STANDARDS

Right to recognition before the law, right of the child to preserve their identity.

EXAMPLES OF HUMAN RIGHTS RECOMMENDATIONS

UN Committee on the Rights of the Child:

The Committee recommends that the State party [...] **Ensure that intersex children have access to identity documents** that correspond with the sex/gender identity of their choosing.⁷⁷

States should put in place measures to ensure **that all adolescents** enjoy their freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy.⁷⁸

The Committee recommends that the State party take the necessary legislative, policy and administrative measures to: [...] **Recognize the right to identity** of lesbian, gay, bisexual, transgender and intersex children.⁷⁹

UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity:

Enact **recognition systems for the gender identity of intersex** and gender diverse children, taking into account the best interests of the child as a primary consideration and respect for the child's right to express views in accordance with age and maturity, in line with the Convention on the Rights of the Child (arts. 3 (1) and 12 and general comments Nos. 12 and 14) and, in particular, in keeping with the safeguards established pursuant to article 19 of the Convention, which must not be excessive or discriminatory in relation to other safeguards that give recognition to the autonomy and decisional power of children of a certain age in other areas.⁸⁰

EXAMPLES OF GOOD PRACTICES

Argentina's Gender Identity Law provides for legal gender recognition and name change in civil registers, birth certificates and national identity cards on the basis of self-identity, stating that all people have the right:

"a) To the recognition of their gender identity;
"b) To the free development of their person according to their gender identity;
"c) To be treated according to their gender identity and, particularly, to be identified in that way in the documents proving their identity in terms of the first name/s, image and sex recorded there."⁸¹

77 See [CRC/C/NPL/CO/3-5](#) (2016), para. 42(b).

78 See [CRC/C/GC/20](#), para. 20.

79 See [CRC/C/CHL/CO/4-5](#) (2015), para. 34.

80 See [A/73/152](#), para. 81 (a).

81 Argentina, Law 26.743 on Gender Identity – Establishing the right of persons to gender identity, 23 May 2012, Article 1.

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm>. See an unofficial translation here by Transgender Europe: <https://tgeu.org/argentina-gender-identity-law>.

Colombia's Decree 1227 (2015) states that "in order to change the sex markers in the Civil Register" through public deed, the applicant must submit "1. A copy of their birth certificate, 2. A copy of their citizenship card, and 3. To make a declaration under oath that they wish to amend their gender markers."⁸²

Under Malta's Gender Identity, Gender Expression, and Sex Characteristics Act (2015), citizens are able to file an application to change their name and gender markers in the civil registry and in their birth certificates, based on their self-identified gender identity: "It shall be the right of every person who is a Maltese citizen to request the Director [for Public Registry] to change the recorded gender and, or first name, if the person so wishes to change the first name, in order to reflect that person's self-determined gender identity."⁸³

82 Colombian Ministry of Justice and Law. [Decreto 1227 Por el cual se adiciona una sección al Decreto 1069 de 2015, Único Reglamentario del Sector Justicia y del Derecho, relacionada con el trámite para corregir el componente sexo en el Registro del Estado Civil](#), June 4, 2015. (unofficial translation).

83 Maltese Parliament. [Gender Identity, Gender Expression, and Sex Characteristics Act](#), 2015.

GENERAL REFERENCES AND FURTHER READING

- OHCHR, [Background Note](#) on Human Rights Violations against Intersex People, 2019.
- OHCHR, [Born Free and Equal](#): Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (2nd Edition), 2019.
- OHCHR, [Living Free and Equal](#): What States are Doing to Tackle Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People, 2016.
- OHCHR, [UN Free & Equal Intersex Factsheet](#), 2020.