

# Fact sheet on **intersex persons**



## A call for recognising the rights of intersex persons

### What is 'intersex'?

'Intersex' is an umbrella term to describe people who are born with natural sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies.

Intersex persons have been referred to as 'hermaphrodites' or persons with 'disorders of sexual development' (DSD). However, both terms are stigmatising and pathologising. Describing something as 'disorder' infers that it is something that has to be corrected.

Variations of intersex traits may be visible at birth, while others only manifest during puberty. No research has been done in Africa to establish the number of intersex persons, however globally experts estimate that intersex persons constitute 0.05 to 1.7% of the total population.

There is misconception around intersex, sexual orientation and gender identity. Intersex relates to natural biological sex characteristics, and is unrelated to sexual orientation or gender identity, although there is a possibility of interaction amongst the three as with any other person.

Intersex persons are stigmatised and often subjected to human rights violations on the basis of their bodies that do not conform to the social classifications of male or female.

### Challenges faced by intersex persons

#### **'NORMALISING' SURGERY**

Coerced, uninformed and unnecessary genital normalising surgeries on minors, aimed at altering the sexual and reproductive anatomy to suit social classifications of male and female. The surgeries are performed without the informed consent of the minor. In most cases adult intersex persons later reject the sex/gender assigned at birth. These often irreversible procedures can cause permanent infertility, permanent pain, incontinence, loss of sexual sensation, and lifelong mental suffering, including depression.

#### **DEATH AND ABANDONMENT**

Infanticide and dumping of intersex children.

#### **LACK OF LEGAL RECOGNITION**

Lack of appropriate legal recognition and poor birth registration and other civil status administrative processes which allow intersex persons to acquire or amend birth certificates.

#### **DISCRIMINATION**

Unfair discrimination in schools resulting in school drop-outs, and discrimination in healthcare facilities, competitive sports, work place, and places of detention.

### Way forward to protect the rights of intersex persons in Africa

#### **LACK OF LEGAL FRAMEWORK**

With the exception of a few African countries there is no law that mentions or protects the rights of intersex persons. This lack of an appropriate legal framework exacerbates human rights violations against intersex persons.

#### **MODEL LAW DEVELOPMENT**

Having identified this gap in national legislation, the Centre for Human Rights proposes the adoption of a Model Law aims to help African States to develop national laws, policies and institutions to protect the rights of all intersex persons.

#### **MODEL LAW AS ADVOCACY TOOL**

The Model Law also aims to act as a tool for advocating for law reform and stronger legal recognition and protection of fundamental rights and freedoms of intersex persons in Africa.

## Nine action points to States

**1. PROHIBIT ALL MEDICALLY UNNECESSARY SURGERIES AND PROCEDURES** on the sex characteristics of intersex children, unless there exists a real risk to the life of the child if the surgery is not performed.

**2. PLACE LESS OF EMPHASIS ON THE SEX/ GENDER REQUIREMENT ON BIRTH CERTIFICATES** to enable intersex persons to register without falling into the two binaries of male and female.

**3. PROVIDE FOR EASY ADMINISTRATIVE PROCESSES** which make it easy for intersex persons to amend name and sex on a birth certificate or any other legal document.

**4. PROHIBIT DISCRIMINATION OF INTERSEX PERSONS** in education, health care, employment, sports and access to public services, and addressing such discrimination through enacting laws and policies, review existing policies, and repealing any laws to ensure that the rights of intersex persons are protected.

**5. INVESTIGATE AND MONITOR HUMAN RIGHTS VIOLATIONS AGAINST INTERSEX PERSONS** through National Human Rights Institutions and ensuring that victims of such human rights violations have access to justice and some form of reparations.

**6. ENSURE THAT ALL INTERSEX PERSONS AND THEIR FAMILIES RECEIVE STATE SUPPORTED PSYCHO-SOCIAL SUPPORT** to the maximum of its available resources.

**7. TRAIN MEDICAL PROFESSIONALS** on how to confront the needs of intersex persons and immediate family members without violating the rights of the concerned persons.

**8. TRAIN OFFICIALS** (members of the judiciary, prison authorities, immigration officers, police, teachers and any other relevant officials) to treat intersex persons equally as with any other persons.

**9. ENSURE THAT ANY LAW OR POLICY IN SUPPORT OF INTERSEX PERSONS IS DEVELOPED AFTER ACTIVE PARTICIPATION AND CONSULTATION WITH INTERSEX PERSONS** and any other interested stakeholders.

## Positive developments in Africa

### SOUTH AFRICA

In South Africa, in terms of section 2 of the Alteration of Sex Description Act of 2003, intersex persons can alter their name and sex on birth certificates to suit preferred gender role. The Promotion of Equality and Prevention of Unfair Discrimination Act of 2004, interprets the definition of 'sex' to include intersex persons therefore intersex persons are equally protected from discrimination on the basis of sex.

### KENYA

In Kenya in terms of section 10(3) the Persons Deprived of Liberty Act of 2014, intersex persons deprived of liberty have the right to decide the sex of the person to do a body search on them.

### UGANDA

In Uganda, in terms of section 38 of the Registration of Persons Act of 2015, intersex minors are allowed to amend particulars on their birth certificates provided that sex has been altered through surgery. However, this provision is not very progressive as it allows particulars to be amended only by minors. The provision also sets surgery as a pre-condition to amend a birth certificate. Genital normalising surgeries have been widely condemned with laws like the Gender Identity, Gender Expression and Sex Characteristics Act, 2015 of Malta prohibiting surgery as a pre-condition for amending birth certificates.

**For more information on the rights of intersex persons, please contact:**

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