PROTECTING INTERSEX PEOPLE IN EUROPE:
A TOOLKIT FOR LAW AND POLICYMAKERS

WITH DIGITAL APPENDIX AND CHECKLIST

Dan Christian Ghattas
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ACKNOWLEDGEMENTS

This toolkit would not have been possible without the strength and resilience of the European Intersex Community and the hard and continuous work of intersex activists all over Europe, nationally and on EU and CoE level. This toolkit would also not have been possible without the 2013 Malta Declaration, the 2014 the Riga Statement and the 2017 Vienna Statement. The work that the European and global intersex community put into creating these documents has been key for developing this toolkit. I want to thank my fellow intersex activists for all the conversations we had in the past ten years and for the continuous support we give each other.

Last but certainly not least I want to thank ILGA-Europe for their ongoing support. Starting in 2009 this collaboration has been substantial in opening doors on the European level, in bringing intersex people together and supporting intersex-led intersex work. My special thanks go to Katrin Hugendubel, Sophie Aujean and Cianán Russell for creating this toolkit with me.
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Bodily autonomy – making one’s own informed decisions about one’s body and what happens to it – is a fundamental human right, repeatedly enshrined throughout myriad human rights instruments globally. Each of us holds this right individually. However, it is not equally protected nor enforced for everyone.

Across Europe, as well as much of the world, the right to bodily autonomy is regularly and grievously violated on the basis of sex characteristics. These violations are increasingly documented, and today, people with variations of sex characteristics are internationally recognised as victims of harmful medical practice and other human rights violations. From 2009 to the present, United Nations Treaty Bodies have called on Member States to stop human rights violations against intersex people 49 times. Of these, Council of Europe Member States have received 26 UN Treaty Body recommendations, 15 of these in the past two years alone. The Yogyakarta Principles plus 10 call for protection of intersex people under the ground of “sex characteristics” and for ending human rights violations on intersex people, including protecting their right to bodily and mental integrity.

Additionally, European bodies such as the Parliamentary Assembly of the Council of Europe and the European Parliament have both passed resolutions (2017 and 2019, respectively) calling for, among other protections and policies, the prohibition of sex-“normalising” surgery and other treatments practised on intersex children without their informed consent in national law among their respective Member States.

On a national level, so far only Malta (2015) and Portugal (2018) have established protections for intersex people from violations of their bodily integrity and, together with Greece (2016), protection against discrimination on the ground of “sex characteristics”. Additionally, courts have begun to recognise and adjudicate on the human rights violations faced by intersex people, both with respect to bodily integrity and gender markers.

Protecting intersex people does not only ensure that people with variations of sex characteristics can enjoy their human rights. It also protects intersex people’s families, as these often equally suffer from the invisibility, shame and taboo surrounding intersex people, and face structural and verbal discrimination. Protecting intersex people and their families by creating an environment that cherishes diversity and works towards inclusion of all parts of the population has an effect on society as a whole. By living and working with people with different experiences and backgrounds we are able to learn and broaden our viewpoints, and diverse views make for better decisions.

Governments working against homophobia and transphobia should therefore also work against the human rights violations and discrimination intersex people face, as these are a direct result of the homophobia and transphobia that still prevails in society. However, as the human rights violations intersex people’s face often differ significantly from those of LGBT people, they need to be protected on their own ground.

Protecting intersex people is not and cannot be treated as a matter of choice. It is instead inherent in the protection of the fundamental rights to which every human being is entitled.

We are delighted to present you with this toolkit and accompanying appendix and checklist so that we can work together to ensure the protection of all people on the basis of sex characteristics, including those most vulnerable to violations and abuses.

Dan Christian Ghattas

Evelyne Paradis

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1 A comprehensive and regularly updated list of UN recommendations concerning intersex human rights violations can be found on the OII Europe website: https://oiieurope.org/international-intersex-human-rights-movement-resource-list/
4 Finland revised its Gender Equality Act in 2015, which now also covers “gender features of the body” in order to protect intersex people.
5 See Appendix.
**HOW TO USE THIS TOOLKIT**

Protecting Intersex People in Europe: A toolkit for law and policymakers comes in three parts:

- **This toolkit**
- **Digital appendix**
- **Digital checklist**

These parts are intended to complement one another and to be used in concert with guidance and input from affected intersex people and communities. The toolkit describes the areas of life in which intersex people are most vulnerable to violations on the basis of their sex characteristics, and provides detailed guidance on what to do to minimise or eliminate these violations. The appendix serves to elaborate the existing legal landscape with references to and excerpts from statements, observations, and jurisprudence. Finally, the checklist is a simplified but complete list of the recommendations from the toolkit, designed as a quick reference guide for policymakers and public servants working to protect the rights of intersex people.

Throughout the main toolkit, references to specific legal instruments that exemplify the current best practice related to sex characteristics are highlighted. Additionally, central concepts such as personal, prior, free, and fully-informed consent and expert-sensitive counselling are explained. In some cases, common pitfalls in legal language that should be avoided are also detailed.

**SOME BASIC FACTS**

**INTERSEX PEOPLE**

Intersex individuals are born with sex characteristics (sexual anatomy, reproductive organs, hormonal structure and/or levels and/or chromosomal patterns) that do not fit the typical definition of male or female.

The term “intersex” is an umbrella term for the spectrum of variations of sex characteristics that naturally occur within the human species. The term intersex acknowledges the fact that physically, sex is a spectrum and that people with variations of sex characteristics other than male or female exist.

Sex characteristics are set out from birth, whether we are intersex or not. However, the fact that someone has an intersex body can become apparent at different times in their life: at birth, during childhood, in puberty or even in adulthood. Depending on the specific life circumstances and the degree of taboo in their environment, a person might learn that they have an intersex body at a very early age or later in life. Some intersex people never find out at all.

According to the United Nations at least 1.7% of the population, or, globally speaking, as of 2019, 131 million people have been born with intersex traits. This means that almost 1 person in 60 has a variation of sex characteristics and does not fit the typical medical and societal definition of male or female, and thus that at all ages they are at risk of being subjected to discrimination and other human rights violations on the basis of their variation of sex characteristics.

According to studies published in the Netherlands in 2014 at least 1 in 200 people are at risk of being subjected to invasive surgeries and other medical interventions, like hormonal treatment, based on being diagnosed by medical professionals as having a "Disorder of Sex Development (DSD)" or an “unspecified” diagnosis, such as “unspecified malformation".

**MILLIONS OF INTERSEX PEOPLE EXIST**

"Disorder of Sex Development (DSD)" is a medical umbrella term, which was introduced in 2006 by a Clinician Consensus Statement. Together with new categories of “syndromes”, it replaced the older medical terms. Some clinicians use DSD to stand for “differences of” or “diverse” sex development. However, in all its forms the term pathologises healthy variations of sex characteristics and refers to intersex sex characteristics as characteristics that are “deviant” from the norm of male and female bodies and thus need to be “disambiguated” or “fixed”. The term “DSD” does not align with human rights standards, and is only used in this document and the accompanying appendix in direct quotations or when referring to medical concepts that use the term.

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of the male/female genitalia.10 Many of these interventions, especially but not limited to surgeries, are irreversible, deferable, non-emergency interventions on healthy bodies10 and these interventions most often take place in infancy and childhood, without personal and fully informed consent.11

PRE-NATAL INTERVENTIONS

Because being intersex in itself is still seen as a disorder, when pre-implantation diagnosis or pre-natal screening show a risk of variations of sex characteristics in embryos and foetuses, both may be prevented from further developing. In the UK for example, embryos determined to have intersex variations are on the termination list for pre-implantation and several parents from different countries in the Council of Europe region have reported to Oil Europe that they were under huge pressure from doctors to abort their intersex child.12

In other cases, prenatal treatment with high-risk off-label use medication (dexamethasone) is prescribed. Dexamethasone has proven to be at high risk of long-term negative effects on the child’s physical health and cognitive capacity,13 and also impacts the health of the parent carrying the child.14 However, to date only Sweden has discontinued the use of the drug for foetal treatment.15

INTERSEX GENITAL MUTILATION (IGM)

Intersex Genital Mutilation (IGM) is an intervention on a healthy intersex body. It is performed when, according to societal and medical notions, a person’s external genitals do not look “normal” enough to pass as “male” or “female” genitals. Performing IGM was not always the default practice. Before the middle of the twentieth century, as a 2016 article of three General Surgeons of the United States points out, “most children born with genitalia that did not fit the male-female binary norm were not subjected to surgery.” Beginning with the 1950s, however, in “an era when pressure to conform to the binary norm were not subjected to surgery”. Beginning with the 1950s, however, in “an era when pressure to conform to the binary norm were not subjected to surgery”. Beginning with the 1950s, however, in “an era when pressure to conform to the binary norm were not subjected to surgery”.

INTERSEX INFANTS AND CHILDREN ARE STILL THE RULE

Surgery and medical interventions on intersex infants and children are still common.25 According to a 2015 survey published by the EU Fundamental Rights Agency, so-called sex “normalising” surgeries on intersex infants and children are carried out in at least 21 of the EU Member States.26 Currently, only Malta and, with certain nuances, Portugal prohibit these harmful medical interventions. In 2017, the Parliamentary Assembly of the Council of Europe confirmed in its resolution Promoting the human rights of and eliminating discrimination against intersex people that it considers these kind of surgeries to be “serious breach of physical integrity” and highlighted that they are performed “despite the fact that there is no evidence to support the long-term success of such treatments, no immediate danger to health and no genuine therapeutic purpose for the treatment.”27 In 2019, the European Parliament emphasised in its resolution The rights of intersex people that it “strongly condemns sex-normalising treatments and surgery” and that it encourages “Member States to adopt similar legislation as soon as possible.”28

Unfortunately, the international medical guidance and systems do not yet fully align with international human rights standards.29 This is informed by much of the medical content covered in this introduction, including the biased and stereotypical cultural views of people, including doctors, continue to hold. Fortunately, some clinicians have become more reluctant to perform certain surgeries at a very early age. This has been especially the case with hormone producing gonads, e.g. intraabdominal tests on infants, which were previously removed by default on the basis of an unfounded cancer risk.30 Some clinicians now opt for not operating and, instead, monitoring this tissue.31
QUICK GUIDE TO FGM AND IGM COMMONALITIES

FGM and IGM share many common characteristics, but vastly different explicit legal standards are in place. Here are explanations of some of the commonalities:

**Framed in terms of the need to be accepted socially**, however, for many intersex people, surgeries in their childhood and teenage years did not improve their situation concerning social inclusion or marginalisation.

**Motivated by beliefs about what is considered acceptable sexual behaviour**, in the case of intersex people, the ultimate goal of those performing IGM is to allow for penetrative intercourse of the future adult and for an alleged ability to procreate. Neither the impossibility to foresee the future intersex adult’s gender identity, sexual orientation or sexual preference, nor the fact that the capacity for penetrative intercourse may be less important for the intersex adult than unharmed genitalia are taken into account.

**Motivated by the notion that parts that are not considered female (or male) enough should be removed**, in the case of intersex people this involves interventions on infants and children such as clitoral reduction/recession, removing the labia, moving the opening of the urethra to the tip of the penis, to which name but a few.

**Impactful on the person’s life and health**, in the case of intersex people this includes impairment of sexual sensation, poorer sexual function, painful scarifying, increased sexual anxieties, problems with desire, infertility issues and lifelong trauma, including feelings of child abuse and sexual abuse.38

Social pressure to conform to gender roles and stereotypes about male and female bodies is common ground shared by FGM and IGM. Like FGM, intersex genital mutilation is carried out for cultural reasons, which, in the case of IGM, are based on the prevailing notion of the binary of human sexes.39 In a binary society “being human” is strongly connected – in everyday life as well as legally – to “being male” or “being female”, to being a “man” or a “woman”. Within that cultural construct, the birth of an intersex child has been treated since the 1950s as a “psychosocial emergency” that needs to be “fixed” by medical means, in order to “prevent parental distress”, to “protect the child from experiencing discrimination as a result of their ‘ambiguous’ genitalia and/or to prevent ‘lesbianism’, ‘tomboyism’ or a ‘gender identity disorder’ in the child”, while and while doing so, the intersex individual’s human rights to bodily autonomy and bodily integrity have been violated, often egregiously.

In 2014, the 24th Conference of Equality and Women Ministers and Senators of the German Lander (FGMK) pointed to the similarities between IGM and FGM and called for implementing a corresponding standard of protection for intersex children. The FGMK pointed out that “familial law already prohibits guardians from consenting to the sterilisation of a child (§ 1631c BGB)” and that, “in the case of girls, parents cannot give effective consent to the removal or circumcision of the clitoris, as this is punishable as female genital mutilation (§ 226a StGB)”, but that intersex minors were “in fact often denied this protection by carrying out procedures that have a sterilizing effect or that alter the genitals of intersex minors without their consent and without compelling medical indication”.40


In 2017, the Bar-FGM Conference on the worldwide ban on female genital mutilation decided to include victims of intersex genital mutilation in their supporting structure through the provision of essential services (medical, psychological and legal).35

**SOCIAL NORMS CAUSE HUMAN RIGHTS VIOLATIONS**

Most societies are structured along the supposed binary of sexes. These societal systems make those who do not fit into the male-female binary especially vulnerable to violations of their bodily integrity, discrimination, harassment, violence in medical settings, or bullying at school and in their job life. The human rights violations intersex people face are rooted in what biochemist George Anna has called “monster ethics”, as pointed to by a surgery-critical article published in 2016 in the Journal of Pediatric Urology: “Babies with atypical sex are not [considered] yet fully human, and so not entitled to human rights. Surgeons make them human by making them recognizably male or female, and only then may they be regarded as entitled to the sexual and medical rights and protections guaranteed to everyone else by current ethical guidelines and laws.”42

**INTERSEX PEOPLE ARE DISCRIMINATED AGAINST**

At every age, intersex people can face stigma, structural discrimination, harassment, lack of adequate medical care, lack of access to needed medication, lack of access to justice, and the invisibility of their bodies in our society.43 Intersex people often face employment discrimination based on their appearance or gender expression. Due to hospitalisation or trauma-related mental health problems, intersex people may need to take off work. Gaps in their education or employment history might be difficult to education or employment history might be difficult to explain to employers. There is a reportedly higher risk of poverty due to lack of education as a result of pathological relation and traumatisation.

**INTERSEXEPHOBIA EXISTS**

Intersexophobia, or interphobia, can be defined as a range of negative attitudes (e.g. emotional disgust, fear, violence,
Having an intersex child is completely natural. However, this is not the information provided to many parents of intersex children. When a child is identified as intersex at birth, parents usually have to cope with the news without any independent expert-sensitive psycho-social counselling.54

Very often, parents are immediately confronted with complex medical explanations about the so-called “condition” of their new-born child.55 These are often further accompanied by offers or even the pressure to proceed with medical treatments that will allegedly fix the child. The information delivered by medical practitioners often lacks clarity about the actual health status of the child.56 As the 2017 PACE Resolution 2191 points out, this kind of medicalised counselling puts parents under pressure to “make life-changing decisions on behalf of their child, without having a full and genuine understanding of the long-term consequences for their children.”57

In everyday life, parents often feel lost about how to communicate to family members, friends or just people they meet on the street that the question “Is it a boy or a girl?” does not fit their child.58 Of the parents participating in a 2015 German survey, 83% felt that there was a severe lack of counselling on how to handle the fact of having an intersex child within their social environment, i.e. in everyday life, with neighbours, teachers, or in kindergarten. 72% felt the need to be supported in how to speak about being intersex within their families.59

Taboo and shame about variations of sex characteristics, still prevailing in society, can lead parents to believe that their child will not be able to lead a happy and fulfilled personal and family life in the future.60 Their own beliefs about sex, gender and gender roles can also create feelings of guilt and shame.61 However, 80% of the participating parents wanted to acknowledge their child’s physical sex development as it is, and wished for counselling on that matter.62

The social pressure parents face, traumatising experiences in medical settings, lack of support in understanding the medicalised information they get from doctors, and lengthy examinations of their new-born child, can put parents at risk of high levels of stress, including the risk of developing post-traumatic stress disorders.53 Therefore, parents clearly need support as well.54

After birth, as children, adolescents and adults, many intersex people face violations of their physical integrity, including medical interventions without personal, prior, persistant and fully informed consent. These interventions reportedly cause severe physical impairments, ranging from painful scar-tissue to lack of sensation to obstructive and urethral issues, as well as psychological trauma. In regards to psychological trauma, evidence and research have shown that infants and very young children already do experience physical as well as psychological trauma and that it impacts them later in life.55

Invasive, irreversible and non-emergency medical interventions should only be performed on a mature individual who explicitly wishes for these interventions and has given their personal and fully informed consent. Infants and children are future adults who will develop gender identities and sexual orientations specific to them, will take their own decisions, and will make their own choices in regards to their personal and professional lives. An intact body, which allows for a multiplicity of choices in the future adult’s life, is key to ensuring the right to self-determination of not only the child but also the future adult.

Oil Europe and ILGA-Europe recommend the creation of a law that protects a person from any non-emergency interventions on the person’s sex characteristics until the person is mature enough to express, if they want, their wish for surgical or other medical intervention and provide informed consent. Such legislation is the only way to stop the violation of the bodily integrity of intersex people and ensure their right to self-determination.

In its 2017 Resolution Promoting the human rights of and eliminating discrimination against intersex people, the Parliamentary Assembly of the Council of Europe has called on Member States to “prohibit medically unnecessary sex-normalising surgery, sterilisation and other treatments practiced on intersex children without their informed consent”; and to ensure “that, except in cases where the life of the child is at immediate risk, any treatment that seeks to
alter the sex characteristics of the child, including their gonads, genitals or internal sex organs, is deferred until such time as the child is able to participate in the decision, based on the right to self-determination and on the principle of free and informed consent.\textsuperscript{56}

\textbf{CURRENT BEST PRACTICES}

The Maltese Gender Identity, Gender Expression and Sex Characteristics Act\textsuperscript{57} is still to be considered a best practice example on how to put these recommendations into law. The Act, among other measures,

- provides clear and human rights-based definitions of terminology (e.g. sex characteristics).
- makes a distinction between treatments that address an actual health need of a person, and surgeries and other medical interventions that are cosmetic, deferrable and performed for social reasons.
- prohibits any sex-“normalising”, sex-“assigning” or sex-altering treatment and/or surgical intervention on the sex characteristics of a minor that could be deferred until a time when the minor is able to make their own decision and provide informed consent.
- allows for surgery and other medical treatment on an infant’s or child’s sex characteristics in cases where the infant’s or child’s life is at immediate risk, provided that any medical intervention which is driven by social factors without the consent of the minor is a violation of the law.
- provides for legal consequences in case the law is breached.

- allows a mature minor to seek a treatment aiming to alter their sex characteristics, which shall be conducted if the minor gives informed consent.
- establishes the right to expert-sensitive and individually tailored, life-long psychological and psycho-social support for intersex individuals, their parents and their families.

\textbf{PERSONAL, PRIOR, FREE AND FULLY INFORMED CONSENT IS KEY}

The 2013 Parliamentary Assembly of the Council of Europe (PACE) Resolution 1945: Putting an end to coerced sterilisations and castrations defines fully informed consent as follows: Fully informed consent:

- includes, that the person has been informed comprehensively and without bias about all possible options.
- is not given if the person agrees to an intervention without having been fully informed, and
- is not given if the person has been pressured or (emotionally) coerced into agreeing. Especially in health settings this includes all pressure that diminishes a patient’s autonomy, as well as non-adressed power imbalances in the patient-care provider relationship “which may impede the exercise of free decision making, for example by those who are not accustomed to challenging people in positions of authority”.\textsuperscript{58}

\textbf{WHAT TO DO?}

In order to ensure intersex people’s right to health, self-determination and bodily integrity, States should create laws that explicitly:

- prohibit medical practitioners and other professionals from conducting any irreversible, non-emergency sex-“normalising”, sex-“assigning” or sex-altering surgical or other interventions on a person’s sex characteristics unless the intersex person has provided personal, free and fully informed consent.
- establish adequate legal sanctions conducting any irreversible, non-emergency sex-“normalising”, sex-“assigning” or sex-altering surgical or other interventions which can be deferred until the intersex person is mature enough to provide informed consent.
- establish an independent working group, composed in equal parts of human rights experts, intersex peer experts, psycho-social professionals and medical experts, to review and revise current treatment protocols to bring them in line with current medical best practice and human rights standards within a limited period of time laid down in the law.
- establish the right to expert-sensitive and individually tailored psycho-social counselling and support for all concerned individuals and their families, from the time of diagnosis or self-referral, for as long as necessary.
- extend the retention period for medical records of surgical and other interventions that aim to alter the genitals, gonads, reproductive organs or hormonal set-up, including consultation minutes, to a minimum of 40 years in order to allow intersex people access to their medical records at a mature age.
- extend the statutes of limitations for surgical and/or other interventions that aim to alter the genitals, gonads, reproductive organs or hormonal set-up of a person to at least 20 years, and suspend them until the minimum age of 21 of the person concerned.
- allow for surgical and/or other reversible and irreversible interventions to be conducted on a mature minor’s sex characteristics, if explicitly wished for by the mature minor and provided the mature minor gives personal and fully informed consent.

\textsuperscript{56} PACE Resolution 2191 (2017), Article 7.1.1 and 7.1.2.


\textsuperscript{58} PACE Resolution 1945: Putting an end to coerced sterilisations and castrations, Article 2 https://assembly.coe.int/nw/xml/cs/Ref/ Xref-XLR01HTML-en.asp?FileID=199844&lang=en

\textsuperscript{59} PROTECTING INTERSEX PEOPLE IN EUROPE: A TOOLKIT FOR LAW AND POLICYMAKERS
2. Strongly condemns sex-normalising treatments

Europe (2019): Intersex

7.1. with regard to effectively protecting children’s right to physical integrity and bodily autonomy and to empowering intersex people as regards these rights:
7.1.1. prohibit medically unnecessary “sex-normalising” surgery, sterilisation and other treatments practised on intersex children without their informed consent;

in the case of a minor a sex-normalising treatment to alter their sex characteristics, establish the presence of an independent third party, who is neither a parent nor legal guardian nor a medical professional treating the minor; the independent party shall take part in the process, in order to guarantee that the consent of the minor is giving freely, and with fully informed consent.

establish the legal obligation for medical professionals in regards to all surgical and other interventions that aim to alter the genitals, gonads, reproductive organs or any hormonal set-up:

• to inform the mature individual comprehensively about the treatment, including other possible medical options and details about risks and possible long-term consequences and effects, based on up-to-date medical information;
• to provide detailed minutes of the consultation, including all of the above information, which is provided to the patient and in addition, in case of a minor, to their parent(s) or legal guardian(s);

and the coverage of intersex genital mutilation by the public and private health systems.

ensure that regulations and practices in public and private sectors, e.g. in international competitive sport, do not bypass national protection and anti-discrimination legislation and provisions.

COMMON PITFALLS TO AVOID

In addition to highlighting best practices, it is also important to note when well-intentioned attempts at protecting intersex people have fallen short or created unexpected problems.

WHICH TERMINOLOGY CAN BE CHALLENGING IN REGARDS TO IMPLEMENTATION OF A LAW?

Some terminology, which may seem to be an obvious choice from the perspective of self-determination and trust in the existing healthcare system has proven to be far more problematic when it comes to ensuring effective protection of intersex people’s bodily integrity, Dili Europe and ILGA-Europe therefore recommend policy-makers to not use the following terms in order to avoid ambiguity and legal loopholes.

In cases where these terms have been included in legislation, specific caution should be paid to implementation in order to prevent undesired circumstances of the law and guarantee intersex people’s access to justice.

“medically necessary” or "medically indicated"

Since the 1950s, medical interventions and treatments on intersex children have been considered to be “medically necessary” and “medically indicated” and have been covered by public and private health insurances.

Decisions as to whether a certain treatment is medically necessary mainly lie with the doctor as the medical expert.

However, there are few and relatively rare cases in which the intersex infant’s life is at risk and immediate treatment is actually indicated/necessary. All other interventions, despite being deferrable, are presented as equally ‘medically necessary’, based on a misconception of what constitutes a societal problem and what is medically indicated. Evidence shows that instead of increasing an intersex individual’s health, interventions “too often lead to the opposite result.” Despite this contrary evidence as well as a lack of positive evidence, many medical guidelines still recommend invasive surgeries and other invasive medical treatments on intersex individuals as a medical necessity, thus reinforcing the medical indication as determined by doctors.

Any law aiming at preventing harmful practices performed on intersex people in medical settings should not use medical concepts like “medically indicated” and “medically necessary” as indicators of the lawfulness of an intervention, as the current definition of these concepts is flawed and continues to carry the high risk of depriving intersex individuals of the enjoyment of their human rights. If these terms are used, they should be clearly defined as referring to actual medical health needs and life-saving treatments.

"manifestation of a child’s gender identity"

There are two significant issues with this language. Firstly, it reinforces biological essentialism and its related assumptions that physical sex characteristics should be linked to gender identity (i.e. someone who identifies as male must have a penis, and when a penis is not present, one must be constructed to validate his “maleness”; someone who does not have a vagina cannot be a “woman”) – a concept heavily embedded into the social constructions of sex and gender and directly linked to violations of human rights such as coerced sterilisations and forced surgeries on the bases of gender identity, gender expression, and sex characteristics.

Furthermore, many deferrable interventions on intersex children are carried out at a very young age. Referring to treatments being postponed until “the child’s gender identity manifests” carries the high risk that parents and/ or doctors may believe or declare the child’s gender identity to be “manifested” in order to carry out deferrable and irreversible interventions on the child’s sex characteristics. Children depend on their caregivers and are especially vulnerable to pressure from adults. It is very

In April 2018, IAAF introduced “Eligibility Regulations for Female Classification (Athlete with Differences of Sex Development)” for international events, including 400m, hurdles races, 800m, 1500m, one mile races and combined events over the same distances (“Restricted Events”). All intersex women whose testosterone level exceeds 5 nmol/L will be forced to take drugs that suppress their natural testosterone level in order to be eligible, see: https://www.worldathletics.org/news/press-release/eligibility-regulations-for-female-classification. However, as the Office of the United Nations High Commissioner for Human Rights (OHCHR) has pointed out, “being interested of itself does not entail better performance, whereas other physical variations that do affect performance (i.e. are not subjected to such scrutiny and restrictions)”, see: United Nations (2010): Free & Equal Fact Sheet Intersex, p. 2; https://unfpa.org/system/unfpa-65-intersex_FactSheet_ENGLISH.pdf. The 2019 UN Human Rights Council resolution on the “Elimination of discrimination against women and girls in sport” notes with concern that the IAAF regulation “may not be compatible with international human rights norms and standards” and called upon States to “ensure that sporting associations and bodies implement policies and practices in accordance with international human rights norms and standards, and refrain from developing and enforcing policies and practices that force, coerce or otherwise pressure women and girl athletes into undergoing unnecessary, humiliating and harmful medical procedures in order to participate in women’s events in competitive sports”, see: A/HRC/40/L.10/Rev.1, p.2 and appendix for more details.

60 Two life-threatening conditions that can occur with some intersex variations (but are not limited to intersex individuals): salt-wasting syndrome and the closure of the urethra. Salt-wasting does not require medical intervention, as the current definition of these concepts is necessary”, based on a misconception of what constitutes a societal problem and what is medically indicated. Evidence shows that instead of increasing an intersex individual’s health, interventions “too often lead to the opposite result.”

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62 For what “medically necessary” actually encompasses see: Conseil d’Etat (2018), p.135-137, 146, see Appendix for a translation into English.


60 For "woman") – a concept heavily embedded into the social constructions of sex and gender and directly linked to violations of human rights such as coerced sterilisations and forced surgeries on the bases of gender identity, gender expression, and sex characteristics.

62 For what “medically necessary” actually encompasses see: Conseil d’Etat (2018), p.135-137, 146, see Appendix for a translation into English.


60 Two life-threatening conditions that can occur with some intersex variations (but are not limited to intersex individuals): salt-wasting syndrome and the closure of the urethra. Salt-wasting does not require medical intervention, as the current definition of these concepts is necessary”, based on a misconception of what constitutes a societal problem and what is medically indicated. Evidence shows that instead of increasing an intersex individual’s health, interventions “too often lead to the opposite result.”

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unlikely that a younger child, or even an older child, will have the capacity to defend themselves when pressure to “consent” is put on them, or be able to identify when the information provided to them is biased or incomplete.

**EXISTING LEGISLATION (E.G., AGAINST STERILISATION OR FGM) IS NOT ENOUGH**

Experience shows that legislation such as legislation prohibiting sterilisation, laws prohibiting (female) genital mutilation or patient rights legislation do not protect intersex people from violations of their bodily integrity. In 2015, the EU Fundamental Rights Agency (FRA) found that “sex (re)assignment or sex-related surgery seems to be performed on intersex children, and young people, in at least 21 EU Member States.”

Many of these countries have laws against (unconsented) sterilisation and/or sterilisation of minors. The different treatment of IG and FGM is even more striking when considering that many intersex individuals who experience IG are registered as female, and, hence, have their genitalia operated on while legally registered as girls without their wish or consent.

In addition, only a portion of the surgeries performed on intersex individuals include sterilisation. With some variations of sex characteristics, medical interventions are performed to facilitate a presumed future capacity to procreate and would thus not fall under legislation that prohibits sterilisation.

**TREATMENT CODES ARE NOT LEGALLY SECURE**

It is important to bear in mind that diagnostic processes and the way treatments are coded within the national health systems and health insurance coverage systems are not exact science and leave a lot of room to manoeuvre.

It is quite common to combine different interventions: sterilisation, for example, can be performed at the same time as a hernia operation, or a surgery on the urethra will be combined with a reduction of the clitoris.

Depending on the way these treatments are coded in the national health system, the treatment necessary to maintain the person’s vital functions can be coded as the primary intervention and may cover up the second, purely cosmetic part of the surgery. In addition, how procedures are carried out and how they are referred to can and does change. Therefore, banning specific procedures through a list of codes does not offer adequate legal protection.

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65 The findings of the German Family Ministry, however, showed that the German sterilisation legislation (§ 165c BGB), is not impervious when it comes to intersex children, as their genital hormone producing tissue may not be considered equivalent to testes or ovaries, see also: Bundesministerium für Familie, Senioren, Frauen und Jugend (2016.a): Situation von trans- und intersexuellen Menschen im Fokus. Sachstandsinformationen des BMFSFJ. Begleitmaterial zur Interministeriellen Arbeitsgruppe Inter- & Transsexualität für Familie, Senioren, Frauen und Jugend (2016.a): Situation von trans- und intersexuellen Menschen im Fokus. Sachstandsinformation des BMFSFJ – Band 5. Berlin, p. 19. https://www.bmfsfj.de/bmfsfj/service/publikationen/situation-von-trans-und-intersexuellen-menschen-im-fokus-sachstandsinformationen-des-bmfsfj-112094

66 All EU Member States criminalise female genital mutilation, either by incorporating it in general criminal law or by explicitly mentioning it in a specific provision or law. 18 countries have a specific criminal law on female genital mutilation, see: European Institute for Gender Equality (EIGE), 2018. Estimation of girls at risk of female genital mutilation in the European Union, Belgium, Greece, France, Italy, Cyprus and Malta, p. 16. https://eige.europa.eu/rd/rd-eige-publications/estimation-grd-risk-female-genital-mutilation-european-union-report-0

WHAT TO DO?

In order to protect intersex people from discrimination and other violations of their human rights, the EU and ILGA-Europe recommend the inclusion of “sex characteristics” as a protective ground in all existing and upcoming anti-discrimination legislation and provisions as well as in hate crime and hate speech legislation and provisions.

The ground “sex characteristics” should:
- be explicitly included in all equal treatment and anti-discrimination provisions and legislation.
- ensure explicit protection in the fields of employment, access to goods and services including housing, and bias-motivated violence.
- ensure explicit protection against discrimination in the areas of social protection, including social security and healthcare, and social advantages and membership of and involvement in organisations of workers and employers.
- ensure that the statutes of limitation take into account the length of time a victim of discrimination needs to recover from discrimination; intersex people are especially vulnerable as a result of continuing invisibility, taboo and shame, and need recovery time before they are able to file a claim; the statute of limitations should reflect this need in order to allow the victim to access justice.

In addition, we recommend establishing comprehensive awareness raising measures for the general public as well as obligatory training about the existence of intersex people and human rights violations intersex people face for professionals working in the area of health, education and law enforcement.

European Parliament (2019): Intersex Resolution
10. Deplores the lack of recognition of sex characteristics as a ground of discrimination across the EU, and therefore highlights the importance of this criterion in order to ensure access to justice for intersex people;

Malta (2015) Gender Identity, Gender Expression and Sex Characteristics Act (2) The public service has the duty to ensure that unlawful sexual orientation, gender identity, gender expression and sex characteristics discrimination and harassment are eliminated, whilst its services provide equal opportunity to all, irrespective of sexual orientation, gender identity, gender expression and sex characteristics.

HEALTH

Intersex people’s health is often jeopardised from an early age. Physical long-term effects of surgical and other medical interventions include, but are not limited to, genital insensitivity and impaired sexual function, sterility, massive internal and external scarring, chronic pain, chronic bleeding and chronic infections, osteoporosis and osteogenesis at a very young age, as well as metabolic imbalances. Psychological long-term effects include post-surgical depression and trauma (in some cases associated with the experience of rape). The complications and physical impairments related to these high-risk interventions are well known among surgeons and DSD specialists and have been discussed in many medical articles over the past decade. However, this has not led to the rejection of these interventions by medical experts.

Despite the increased visibility of both intersex people and the human rights violations they face in recent years, intersex people still encounter taboo and stigma in their everyday lives. Many intersex people face severe trauma from the unconsented interventions they were subjected to: of the 439 participating intersex individuals of all ages in a 2007 German study, almost 50% reported psychological problems and a variety of problems related to physical well-being and sex life. Not only the adult respondents but also the children and adolescents made a connection between those problems and the medical and surgical treatments they had been subjected to, see: Netzwerk Intersexualität (2008) and, for a comprehensive summary J. Woweries (2012), p. 16-17.

In a 2018 study showed similar findings: 38% of the intersex respondents had tried to access mental health services in the preceding 12 months, and 13% of those attempts were unsuccessful. Prevalence rates of self-harming behaviour and suicidal tendencies in intersex people that were subjected to “normalising” surgeries have been found to be “twice as high as in a community-based comparison group of non-traumatized women, with rates comparable to traumatized women with a history of physical or sexual abuse.”

IMPAIRED ACCESS TO HEALTH

Intersex people sorely need access to expert-sensitive health services. However, they often face severe obstacles when trying to access health and care services, such as ongoing discrimination and (re)traumatising experiences with healthcare professionals.

As the 2017 PACE report points out, a severe lack of knowledge about intersex people, the human rights violations they face and the specific needs that follow from these experiences exists among medical practitioners. This lack is matched with personal bias that can result in disbelief and insults, the refusal to perform needed examinations, and examinations being carried out in violent ways or without the intersex person’s consent. Intersex people regularly speak in self-help groups and report to national intersex NGOs or to OII Europe that they are at risk of sexual harassment in medical settings.

70 This term does not align with human rights language. For more information, see textbox on p. 9.
72 Ibid.
73 81% of the participants had been subjected to one or multiple surgeries due to their DSD diagnosis (see textbox on p. 9). Two-thirds made a connection between those problems and the medical and surgical treatment they had been subjected to, see: Netzwerk Intersexualität (2008) and, for a comprehensive summary J. Woweries (2012), p. 16-17.
75 J. Woweries (2012), p. 15.
severely hinders intersex people in accessing their right to health. Training modules have been developed, e.g. in the framework of the EU Health4LGBTI project,79 but a lot remains to be done on national level to increase knowledge about and respect towards intersex people.

When seeking medical help for issues directly related to their sex characteristics, diagnosis or sexuality, intersex people often face highly insensitive and violent behaviour. For example, a 2014 Dutch study on the experience of intersex people in different areas of life emphasised that six out of seven spoke “with a great deal of emotion about poor information, insensitive communication and discourteous treatment”.80

Also for health issues which are not related to their variation of sex characteristics, intersex people face challenges which the non-intersex population does not face: a 2018 study from the UK found that intersex respondents were more likely than non-intersex respondents to say that their general practitioner was not supportive.81 Intersex respondents were also more likely than non-intersex respondents to say they were too worried, anxious or embarrassed to go to their general practitioner.82

**ACCESS TO NEEDED MEDICATION**

Treatments and medications needed as a direct consequence of so-called “normalising” interventions are often not covered by health insurance. This can include, for example, lifelong hormone substitution therapy after the removal of hormone-producing tissue in order to prevent osteopenia and osteoporosis.83

**COUNSELLING**

Lack of adequate psycho-social counselling for intersex people is still commonplace in Europe: a 2015 German survey found that of 630 participants (intersex adults, parents of intersex children, counselling professionals and intersex experts), only 4% considered the existing counselling services to be sufficient. 90% of the participants found the existing counselling services insufficient for intersex adults and 95% pointed to the lack of offers for intersex children and adolescents. 95% found the counselling option for parents of intersex children to be insufficient. Almost all participants considered comprehensive counselling services important in order to “avoid premature decisions.”84

The support must be accessible as well: 76% of the study’s participants wished for support offers in their immediate vicinity and 59% wished for a minimum of several contact points and advisory services per federal state.85

The 2017 Amnesty report “First, do no harm” showed similar findings for Denmark, as did a 2018 survey in the UK.86 OII Europe member organisations report the same situation for at least 14 more countries in the Council of Europe region.

A lack of psycho-social counselling options for parents can be extremely harmful or even fatal for the child as well: parents of intersex children who are provided with medicalised information are almost three times more likely to consent to surgery than those who receive de-medicalised information.87

WHAT TO DO?

**Right and access to health**

National surveys as well as the UN shadow reports clearly show that intersex people lack protection of their right to health. In order to ensure intersex people’s enjoyment of their right to health, States should take measures to:

- protect people with variations of sex characteristics from non-emergency, invasive and irreversible “normalising” surgeries and other medical practices without the intersex individual’s personal and fully informed consent (see Chapter 1) as well as establishing:
  - the right to obtain treatment, including preventive check-ups and needed medication, which are based on the individual’s physical needs and are not limited by the sex/ gender marker in their official documents.
  - the right to lifelong coverage of any medication needed as a result of surgical and/or other interventions on the sex characteristics of a person by national health insurance reimbursement systems.
  - the right to access to coverage that is not limited by the sex/gender marker in the person’s official documents, for any treatments.
  - the right to expert-sensitive and individually tailored psychological and psycho-social counselling and support for all concerned individuals and their families, from the time of self-referral or diagnosis for as long as necessary.
  - the right of survivors of intersex genital mutilation (IGM) to access reparative treatments on the same coverage terms as those provided for survivors of female genital mutilation (FGM).
  - the right of access to one’s own complete medical records, including for minors, as well as taking measures to:
    - include human rights-based information about the existence of intersex people and about intersex issues in all medical curricula and other curricula in the area of health.
    - establish obligatory training for medical professionals, such as doctors, midwives, psychologists and other professionals working in the health sector (e.g. reception desk staff), in order to ensure that intersex individuals and their families have access to adequate healthcare and are protected from discrimination. The

79 Health4LGBTI is an EU-funded pilot project aiming at reducing health inequalities experienced by LGBTI people, see: https://ec.europa.eu/health/social_determinants/projects/ep_funded_projects_en#fragment2
80 The Netherlands Institute for Social Research (2016), p. 54; for more testimonies about violence experienced in medical settings see: ibid. p. 54–55; as well as UN Shadow reports submitted from intersex NGOs: a comprehensive and regularly updated list for the Council of Europe region can be found on: https://ec.europa.eu/ international-intervening-human-rights-movement-resource-list/.
82 12% of intersex respondents and 7% of non-intersex respondents, or intersex people are nearly twice as likely to indicate worry, anxiety or embarrassment related to visiting their general practitioner, see: Government Equality Office (2018), p. 24.
83 5% of the study’s participants wished for support offers in their immediate vicinity and 59% wished for a minimum of several contact points and advisory services per federal state.
84 The 2017 Amnesty report “First, do no harm” showed similar findings for Denmark, as did a 2018 survey in the UK.86 OII Europe member organisations report the same situation for at least 14 more countries in the Council of Europe region.
81 As of January 2019, UN treaty bodies have issued 49 recommendations on intersex, 26 of which reprimand Council of Europe Member States.

71.3. provide all intersex people with health care offered by a specialised, multidisciplinary team taking a holistic and patient-centred approach and comprising not only medical professionals but also other relevant professionals such as psychologists, social workers and ethnics, and based on guidelines developed together by intersex organisations and the professionals concerned;
71.4. ensure that intersex people have effective access to health care throughout their lives;
71.5. ensure that intersex people have full access to their medical records;
71.6. provide comprehensive and up-to-date training on these matters to all medical, psychological and other professionals concerned, including conveying a clear message that intersex bodies are the result of natural variations in sex development and do not as such need to be modified;

European Parliament (2019): Intersex Resolution
2. Stresses the need to provide adequate counselling and support to intersex children and intersex individuals with disabilities, as well as to their parents or guardians, and fully inform them of the consequences of sex-normalising treatments;
Intersex students reportedly face discrimination in all areas of school life: they do not appear in educational curricula at all, or only as an imaginative product of mythology (e.g. hermaphrodites), as an example of "abnormality", or viewed in a pathological way (in biology texts, medical handbooks or encyclopedias). Sex education does not take into account that bodies other than the so-called "male" or "female" bodies exist, and thus increases the feeling of shame, secrecy, not existing at all or being a fraud at a vulnerable age.

Intersex people from all over Europe have reported facing discrimination and bullying at school and in further education, including the use of derogatory language and physical and psychological violence, if their gender expression, stature or other parts of their appearance do not conform to the female or male norms. Research has shown that bullying often leads students to drop out or experience significant mental health problems. Long and/or repeated periods of hospitalisation also can lead to early school drop-out and act as a source of bullying against intersex students. These are harmful outcomes for both the individual as well as the larger community and society. In addition, intersex students may face problems enrolling at school in the first place, because their physical appearance or gender expression do not fit normative expectations.

Places where the body becomes visible to others, such as toilets and changing rooms, are common areas of anxiety and reported harassment, regardless of whether the intersex person has had a so-called "normalising" surgery performed on them or not.

On an even more alarming level, intersex individuals also face educational impairments directly linked to the violation of their bodily integrity and to the trauma related to insensitive communication and mistreatment by medical practitioners, as well as to the taboo and shame that is inflicted on them. Most surgeries, which are performed at an early age, lead to several follow-up operations over the years. Some children drop out of school as a result of this long-term recovery process. Unwanted hormonal treatment, in childhood or puberty, with the aim of altering the body towards the assigned sex has also been reported to coincide with a decrease in school grades.

In its Resolution 2191 (2017) "Promoting the human rights of and eliminating discrimination against intersex people", the PACE called on Member States to ensure that "adequate psycho-social support mechanisms are available for intersex people and their families throughout their lives." It has also called on Member States to "support civil society organisations working to break the silence around the situation of intersex people and to create an environment in which intersex people feel safe to speak openly about their experiences." Providing independent, non-medicalised psycho-social counselling is a key factor for preventing invasive and irreversible surgeries and other medical treatments on intersex infants and children. It is also sorely needed to ease the burden on parents and families of intersex individuals. With good support systems, parents and families of intersex children can support their children and face possible challenges that lie in their way. To this aim, measures should be taken to:

- establish professional intersex peer counselling,
- ensure access for intersex people and their families to non-pathologising psycho-social counselling and peer support within close proximity,
- add human rights-based information about the existence of intersex people and intersex issues to curricula for all students in the areas of counselling and social work.

92 See: Surya Monroe et al. (2017), p. 49; see also: The Netherlands Institute for Social Research (2014), p. 48-49, 51. Statistical data are lacking for European countries to date. However, a 2015 UNESCO report on school bullying, violence and discrimination in the Asia-Pacific region found that of the participating 272 Australian intersex individuals, aged 16-45, only a quarter of participants rated their overall experience at school positively. The overwhelming majority of participants (92%) did not attend a school with inclusive puberty/sex education. Overall, 18% of people with variations of sex characteristics had primary school education only (compared to 2% of the general Australian population). Many participants (88%) had experienced discrimination ranging from indirect to direct verbal, physical or other discriminatory abuse. Well-being risks were reportedly high, see UNESCO/TH-ENS/HP2/15/042, p. 38. http://unesdoc.unesco.org/images/0023/002354/235414e.pdf
93 See also: The Netherlands Institute for Social Research (2014), p. 49. A Russian study found that almost all (91%) participants experienced bullying related to their intersex variations at some point in their lives. Most often the bullying happened on the Internet (73%), in a school (64%) and in the company of friends (46%), see Intersex Russia (2016) Intersex in Russia, p. 42-43 https://docs.sentinel.com.ua/PDF/RE003.nih4f5157y0H4LA208m68k51538H03020.pdf
96 A 2018 survey showed that "female boys" may face problems in being enrolled at school. "Female boys", widely perceived as being gay, were at least three times more likely to be refused enrolment in primary schools (15%) compared to boys not perceived to be feminine (5%) (World Bank Group, PYSOS, ERA, The Williams Institute (2016): Discrimination against sexual minorities in education and housing evidence from two field experiments in Serbia, p. 6) http://documents.worldbank.org/curated/en/501912166500656983/pdf/124568-SEIBERI-WP-151209-DISCRIMINATION-AGAINST-SEXUAL-MINORITIES-IN-EDUCATION-AND-HOUSING-EVIDENCE-FROM-TWO-FIELD-EXPERIMENTS-IN-GERMANY-PUBLIC-SEIBERI.pdf; some intersex people have a body that would be considered as 'too feminine' or 'too masculine' for the sex they were assigned to. It is very likely that these intersex children and adolescents face the risk reported in the 2014 survey.
98 Incident is reported to OH-EU by intersex people from Germany and France.
100 See J. Wiesner (2012), p. 6-9; see also: Surya Monroe et al. (2017), p. 51.
This physical and psychological strain often prevents intersex people from developing their full potential and leads to under-achievement at school. 102 As a result, these children and young adults may face significant difficulties in obtaining a higher education degree and are at risk of poverty when growing older. Intersex people who manage to achieve higher education still struggle with the combined impact of the human rights violations they experienced and the discrimination they still face in adulthood. 103

WHAT TO DO?

Every child’s right to quality education on the basis of equal opportunity is firmly enshrined in the UN Convention on the Rights of the Child. 104 A child’s enjoyment of this right, however, depends on different factors, one of them being the school's capacity to protect children from discrimination and harassment. Establishing school policies that oblige schools to create an inclusive and empowering environment is also key for protecting the rights of intersex children and adolescents to education.

The 2018 IGLYO LGBTQI Inclusive Education Report has shown that the main areas for improvement in regards to discrimination of LGBTQI students are compulsory education curricula, mandatory teacher training and data collection on bullying and harassment on grounds of actual or perceived sexual orientation, gender identity and expression or variation in sex characteristics. As of 2018, only two countries across Europe (Malta and Sweden) provide most of these measures with respect to sex characteristics specifically. Some regions in Spain have also developed inclusive laws and policies, but these have not been implemented nationally. By contrast, eleven countries have failed to implement any measures. 105

Key measures to protect intersex students from structural and verbal discrimination and harassment should therefore include:

- establishing disaggregated data collection on bullying and harassment in school environments.
- establishing monitoring and evaluating tools and measurements for school inclusiveness.
- including intersex people and the existence of more than two biological sexes in a positive and empowering way in school curricula, text books and education materials in order to increase the understanding of the general public on the quality of sex as a spectrum and the existence of intersex people and to improve the self-confidence of intersex children and adolescents.
- establishing school policies that create a framework that is appropriate for protecting intersex students, and which,
  - explicitly protect intersex students/students with variations of sex characteristics.
  - include basic facts about intersex students, e.g. that they can have all possible gender identities, that they may or may not transition, or that they may or may not be subjected to surgery or other medical interventions.
  - explicitly respect the right of all students to discuss and express their gender identity and expression as well as their sex characteristics openly or not and to decide with whom, when and how much private information they share.
  - explicitly include derogatory language in the scope of bullying, include derogatory language behaviour that takes place in the school, on school property, at school-sponsored functions and activities, as well as usage of electronic technology and electronic communication that occurs in the school, on school property, at school sponsored functions and activities, on school computers, networks, fora and mailing lists.
  - establish mandatory training about the existence of intersex people and about discrimination and human rights violations intersex students may face at school and in their everyday life for teachers, social workers, school psychologists and other professionals and staff working at schools.
  - establish low-threshold psychological and social support mechanisms for intersex students.
  - explicitly establish the entitlement of the intersex student to be provided with, on request, specific arrangements in relation to gender-specific facilities such as toilets and changing rooms, by providing them with a safe and non-stigmatising alternative.
  - encourage schools to designate facilities designed for use by one person at a time as accessible to all students regardless of their sex or gender, and to incorporate such single-use facilities into new construction or renovation.
  - allow for all students to participate in physical education classes and sports activities, including competition sports, in a manner consistent with their gender identity.
  - encourage schools to evaluate all gender-based facilities, activities, rules, policies, and practices in order to ensure that they meet equal treatment requirements and ensure non-discrimination for all students regardless of their sex, gender, or sex characteristics.
  - explicitly obligate school staff to use the name and pronoun based on the student’s request, regardless of whether these have been changed in official documents.
  - confirm or establish the school’s obligation to change a student’s official records to reflect a change in legal name and/or gender upon receipt of documentation that such change has been authorised, including reissuing or exchanging any social document or certificate relative to them according to their new name and/or gender.

INTERSEX PEOPLE FACE DISCRIMINATION IN JOB SEARCH AND EMPLOYMENT

When it comes to job search and employment, intersex people are one of the most vulnerable groups within the LGBTQI spectrum. Challenges faced by intersex people in school often continue into their working life, perpetuating taboo, secrecy and shame. They can be victims of direct or indirect discrimination and harassment because of their physical appearance or gender expression. Some intersex people have obtained a disability status due to the physical impairments they have as a result of medical interventions. Depending on the country, this status can offer some protection; however, it can also come at the cost of additional discrimination and stigma as a persons with disabilities.

Employee medical checks can be extremely difficult for intersex people, especially when the medical practitioner in charge is not educated about the existence of intersex individuals or considers intersex people to have a “disorder of sex development”. This is often exacerbated by trauma associated with having to undergo a medical examination. Once they secure employment, intersex people have reported intrusive curiosity about their bodies from their co-workers, or, when they opened up, disbelief and rejection. Just as in education, the strain of discrimination and stigmatisation may lead to higher absence rates, increasing the risk of intersex people losing their jobs.

Some intersex people have experienced the need to explain gaps in their education or employment history, resulting from times when they were hospitalised or when they were not able to work due to depression or trauma. Employee medical checks can be extremely difficult for intersex people, especially when the medical practitioner in charge is not educated about the existence of intersex individuals or considers intersex people to have a “disorder of sex development”. This is often exacerbated by trauma associated with having to undergo a medical examination.

WHAT TO DO?

Important steps towards guaranteeing intersex people’s full access to employment and protection from discrimination in work life are to:

- add the ground of “sex characteristics” to all anti-discrimination legislation and other equal treatment provisions in the area of job-search, training and employment.
- general awareness-raising measures with the general public.
- informing trade unions and work councils about the existence of intersex people and establishing training measures on discrimination intersex people may face at the workplace.
- informing medical officers and company physicians about the existence of intersex people and establishing obligatory, human rights-based trainings on specific needs intersex people may have, especially in regards to medical examinations.


108 This term does not align with human rights language. For more information, see textbox on p. 9.

109 See also chapter on Health, p. 23.


HATE CRIMES AND HATE SPEECH

INTERSEX PEOPLE ARE VICTIMS OF HATE CRIMES AND HATE SPEECH

Research has shown that intersex people are victims of intersex-related derogatory language on a regular basis throughout Europe.132 In some languages, derogatory (or pathologising) language is the only language that exists to describe intersex people and their bodies, which requires intersex activists to create positive and empowering language from scratch.133 Derogatory language perpetuates the notion that intersex people do not have the same human rights as everyone else, adding to their vulnerability.

As long as there exists no protection on the ground of sex characteristics, incidents of hate speech and hate crimes throughout Europe.112 In some languages, derogatory (or sexual) language on a regular basis describe intersex people and their bodies, which requires pathologising) language is the only language that exists to produce, spread or promote hatred and discrimination towards intersex people, it is important to:

- include “sex characteristics” as a protected ground in existing hate speech and hate crime legislation and provisions, and thereby guarantee the principle of equal treatment between people irrespective of their sex characteristics. This allows and ensures intersex individuals are able to access justice on the basis of a ground that matches their specific area of vulnerability in society. In order to combat all forms of expressions that are likely to produce, spread or promote hatred and discrimination of intersex people, it is important to:

- prohibit intersexphobic speech and hate crimes in the media, including on the Internet and social media.
- include intersex people as a vulnerable group in provisions and measures concerning the rights, support and protections of victims of crime.
- monitor intersexphobic hate speech and hate crimes and lack of knowledge, puts intersex people at additional risk when reporting such incidents to legal authorities.
- create and evaluate protective measures to prevent intersexphobic hate speech and hate crimes.
- evaluate existing measures in regards to intersex inclusion.

WHAT TO DO?

In order to combat all forms of expressions that are likely to produce, spread or promote hatred and discrimination of intersex people, it is important to:

- include “sex characteristics” as a protected ground in existing hate speech and hate crime legislation and provisions, and thereby guarantee the principle of equal treatment between people irrespective of their sex characteristics. This allows and ensures intersex individuals are able to access justice on the basis of a ground that matches their specific area of vulnerability in society.
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- include intersex people as a vulnerable group in provisions and measures concerning the rights, support and protections of victims of crime.
- monitor intersexphobic hate speech and hate crimes.
- create and evaluate protective measures to prevent intersexphobic hate speech and hate crimes.
- evaluate existing measures in regards to intersex inclusion.

INTERSEX REGISTRATION AT BIRTH

THE THIRD OPTION

Like everyone else, intersex people may identify as male, female, non-binary or with any other gender. Providing a third option for sex/gender registration in addition to the sexes/genders “male” and “female” acknowledges diversity and strengthens the visibility and recognition of intersex people and people with non-binary gender identities, provided that some very important rules are followed:

- the third option must be used only on a voluntary, personal basis.
- the third option must be available to all people.
- parents must not be obliged to have their intersex child registered with the third option, as this leads to outing the child as intersex in a society where this may put the child and their family at risk; in addition, many intersex people do not identify as a third gender but as male or female.
- when deciding the name of the third option, all relevant members of civil society, including intersex human rights NGOs, should be consulted and involved in the development of the most suitable term. The term used to signify the third option must be a positive, respectful and inclusive term in the respective language.
- establishing a third option requires adapting all legislation, implementation directives and administrative processes to ensure that people registered as a third gender have equal access and equal rights to those registered as “female” or “male”, e.g. in regards to family rights, access to health, social security, etc.

European Parliament (2019): Intersex Resolution

11. Calls on the Commission to enhance the exchange of good practices on the matter; calls on the Member States to adopt the necessary legislation to ensure the adequate protection, respect and promotion of the fundamental rights of intersex people, including intersex children, including full protection against discrimination.

A BLANK GENDER MARKER IS NOT THE SAME AS A GENDER MARKER

Next to a third gender marker, the option of leaving the gender or sex marker blank is also being discussed. However, this option carries several problems of which policymakers should be mindful.

First of all, a blank gender marker is not the same as a positive and respectful third gender marker and may not be considered a positive recognition of someone’s identity: “not having an entry is not the same for me as having a suitable entry.” (Vania, Dritte Option)115

Secondly, the blank option, like the third gender marker, must be registered as a free choice and open to all. In 2013, Germany established a non-entry in the birth registration, not as a free choice, but based on medical determination of an intersex variation of sex characteristics. The law established that if “the child can be assigned to neither the female nor the male sex, then the child is to be entered into the register of births without such a specification”.116 As a result, the law made leaving the sex marker blank in the birth certificate a legal requirement for all cases where, according to the implementation directives, a medical statement would confirm that the sex of the child was not determinable as male or female. As with an obligatory third option for intersex children, this law led to outing intersex children. In addition, the 2013 provision could further encourage the (potential) parents and doctors to avoid an “ambiguous” child at any cost (through abortion, prenatal “treatment” or so-called “disambiguating” or “normalising” surgical and/or hormonal interventions). Research has shown that very few children are assigned without a sex marker and that some children with a blank gender marker were assigned a sex after only a few months. The study also showed that many legal issues are still not

113 Unpublished interviews conducted by the author in 2017 with intersex activist Pol Naidenov (Bulgaria) and Kristian Randjelovic (Serbia, Balkan Countries).
115 Vania and the strategic litigation group 3. Option filed the gender marker case for a third gender marker option that was decided positively by the German Federal Constitutional Court in 2018 http://btlitte-option.de/en-hgh-hat-entschieden-unsere-pressemitteilung dau/ (translated from German by the author).
116 § 22 Absatz 3 FSIG (translated from German by the author).
regulated for individuals with a blank gender marker, hence leaving them in a legal limbo.\footnote{117}

In the meantime, adult intersex people have successfully applied for a removal of the female or male gender marker in their birth certificates by providing medical records.\footnote{118} This shows that there are mature intersex people who may choose this option. However, as long as medical records and other requirements are a prerequisite, this option is not available for intersex people who do not have access to their medical records or have medical records which are not considered as confirming that they are not of one of the two binary sexes. In addition, people who are not intersex have no access to a blank sex/gender registry. This situation creates inequality on many levels and should be considered discriminatory practice.

If a blank sex/gender marker is to be established, it should be obligatory for all children regardless of their sex characteristics up to the age of maturity. Beginning with the age of maturity the option should be given, if a person wishes so, to register a sex/gender out of multiple options or to leave the sex/gender marker blank. There should be no limit to how often a person can change their gender marker.

If this best practice is not currently an option, then the blank sex/gender marker should follow all the prerequisites as listed above for the third gender marker.

\footnotetext[117]{Between 2013 and 2015, only 12 blank entries were registered at birth, two of them where changed into male/female some months later; despite the fact that, according to estimates based on diagnostic prevalence, between 280 and 300 children were born during this time who fit the criteria from a medical perspective. The German Institute for Human Rights concluded that the law had in fact not been applied, see: Bundesministerium für Familie, Senioren, Frauen und Jugend (2017): Gutachten. Geschlechtervielfalt im Recht. Status Quo und Entwicklung von Regelungsmodellen zur Anerkennung und zum Schutz von Geschlechtervielfalt. Begleitmaterial zur Interministeriellen Arbeitsgruppe Inter- & Transsexualität - Band 8: Deutsches Institut für Menschenrechte Dr. Nina Althoff, Gerta Schalimow, Dr. Petra Follmar-Otto. Berlin, p. 17-18, 31-32.}

\footnotetext[118]{Bundesministerium für Familie, Senioren, Frauen und Jugend (2017), p. 17.}

\footnotetext[119]{The Yogyakarta Principles plus 10 clearly indicate that the registration of sex or gender by States should eventually cease. See Principle 33, https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A3_yogyakartaprinciplesWEB-2.pdf}
LEGAL GENDER RECOGNITION

The European Court of Human Rights (ECtHR)\(^{120}\) and international human rights bodies\(^{121}\) have repeatedly made clear that procedures for legal gender recognition must respect the principles of self-determination and personal autonomy. This is also required by the right to privacy and family life, as laid down in Article 8 of the European Convention on Human Rights.

Research has shown that a gender marker in official documents that reflects and recognises the person’s gender identity has a positive impact on an individual’s mental and emotional health.\(^{122}\) Legal gender recognition also reportedly improves a person’s life in regards to social inclusion and reduces the risk of structural and other discrimination.\(^{123}\)

A substantial number of intersex people reject the sex that they were registered with at birth. A 2012 clinical review paper found that between 8.5% and 20% of intersex people, regardless of whether their body was subjected to medical interventions or not, developed a gender identity that did not match the sex or gender that was assigned to them at birth.\(^{124}\)

It is therefore crucial that intersex individuals have the option — like everyone else — to adjust their gender marker by a low-threshold procedure, based on self-determination so that it matches their gender identity.

INTERSEX CHILDREN AND ADOLESCENTS MUST BE ALLOWED TO CHANGE THEIR GENDER MARKERS IN OFFICIAL DOCUMENTS

Respect for a child’s identity is crucial in the development of a positive self-image, and the child’s right to identity is protected under Article 2 of the UN Convention on the Rights of the Child (UNCRC). Intersex children and adolescents are especially vulnerable to bullying and harassment at school. They face an increased risk of dropping out of school and lack of education, and poverty at an adult age as a result.\(^{125}\) For an intersex child or adolescent whose gender identity does not match the sex/gender that was assigned to them at birth, legal gender recognition can be key to improving their standing related to their peers and/or school staff. With regards to the person’s future employment, legal gender recognition before the legal age of maturity also allows school certificates to be issued with the correct gender, hence diminishing the risk of having to explain mismatches in the future. Therefore, mature children and adolescents should be able to change their gender markers by a low-threshold procedure, based on self-determination.

SOCIETAL REALITY MAKES MULTIPLE SEX/GENDER MARKER CHANGES INEVITABLE

A person’s gender identity is a matter of self-determination and personal autonomy and can evolve over time.\(^{126}\) In addition, when an individual first changes their gender marker, they may not yet know which gender marker would represent them best or the best possible marker might not be available. Furthermore, new options become available (such as a third gender marker), they must have the right to adjust their marker. For all of these reasons, allowing for changing a gender marker more than once acknowledges and reflects these realities.\(^{127}\) and therefore protects the rights to privacy and family life, as enshrined in Article 8 of the European Convention on Human Rights.

Intersex people who have been forcibly assigned a gender through surgical or other means often face trauma and may face severe obstacles in developing their own gender identity. Being able to change their gender marker several times while healing from the trauma and while developing their identity is important in order to prevent re-traumatisation as a result of the pressure that a ‘one time only’-chance would put on them. Limiting the number of times for changing the gender marker, therefore, is particularly problematic for intersex people.

REQUIRING MEDICAL RECORDS FOR LEGAL GENDER RECOGNITION IS A HUMAN RIGHTS VIOLATION

In 2017 a group of UN and international human rights bodies\(^{128}\) called on States to “facilitate quick, transparent and accessible legal gender recognition and without abusive conditions, guaranteeing human rights for all persons, regardless of free/informed choice and bodily autonomy.” The group explicitly pointed out that “coercive medical interventions/procedures should, therefore, never be employed”.

REQUIRING DIVORCE FOR LEGAL GENDER RECOGNITION IS A HUMAN RIGHTS VIOLATION

The UDHR lays out the fundamental human right to found a family.\(^{129}\) Requirements that an individual be single or that a marriage be dissolved to undergo legal gender recognition violate this right. For intersex people, accessing the right to found a family can be made especially difficult due to arbitrary sex assignments at birth, administrative and legal hurdles to acquiring accurate identity documents, and social isolation and trauma. Further limitations in the form of forced divorce are especially punitive.

127 Sunil Babu Pant et al. v. Prime Minister and Council of Ministers et al / Case: Mandamus/070-WO-0287
128 The group consisted of the UN Committee on the Rights of the Child (CRC), UN Committee against Torture (CAT), UN independent experts, the UN Special Rapporteur on extreme poverty and human rights, the UN Special Rapporteur on the right to education, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the UN Special Rapporteur on violence against women, its causes and consequences, the Inter-American Commission on Human Rights (IACHR), African Commission on Human and Peoples’ Rights (ACHPR), and the Council of Europe Commissioner for Human Rights.
130 This term does not align with human rights language. For more information, see textbox on p. 9.
131 See: S2k-Leitlinie Varianten der Geschlechtsentwicklung 2016, p. 5.
INTERSEX REFUGEES AND ASYLUM SEEKERS NEED TO BE PROTECTED

Intersex refugees and asylum seekers are especially vulnerable. Being able to change the gender marker in their documents can protect intersex and trans refugees and asylum seekers from the risk of structural and other discrimination and can ease the pressure that they are subjected to. Therefore, low threshold procedures for legal gender recognition based on self-determination should be established for refugees and asylum seekers who wish to have their gender identity reflected in their official documents.

Access to justice and redress

Many intersex people, who have been subjected to surgeries and other medical treatments without their consent as infants, children or adolescents, were raised in an atmosphere of silence and taboo. Too often, they only find out as adults that they underwent treatment not because of health reasons but for societal reasons. Once they do find out, time to process and heal is needed before the person can start to think of seeking justice.

Intersex people seeking justice for the harm done by medical practices to their bodily integrity report challenges, such as difficulties in accessing their (full) medical records, sometimes because the retention period has expired, and sometimes because hospitals and doctors do not give them access, even in those countries where the right of patients to access their medical records is legally protected. And even when intersex people do obtain their medical documents, the claim might be time-barred: too often, it is legally too late for intersex people to seek justice.

If a case is brought to court, lawyers and judges in most cases lack fundamental knowledge about the existence of intersex people. Intersex people seeking justice need to instead first educate them in a situation of increased vulnerability. In addition, a doctor or hospital can claim that the medical interventions were in compliance with medical standards at the time. A court may be likely to base its ruling on this argumentation, especially as long as intersex people’s bodily integrity is not protected by law. To this date, only two intersex people in Europe successfully went to court to get justice for the harmful medical practice they were subjected to. In one case, the petitioner won their suit against the surgeon in charge of the operation; in the other case, the petitioner won their case against the hospital where the surgery was performed in the first instance, but then settled in the second instance.

What to do?

In order to allow intersex people to access justice, States should:
- extend the retention period for medical records of to at least 40 years in order to allow intersex people access to their medical records at a mature age;
- extend the statutes of limitations to at least 20 years, and suspend them until the minimum age of 21 of the person concerned;
- establish adequate legal sanctions for medical and other professionals who conduct any sex-normalising”, sex-assigning” or sex-altering surgical or other interventions which can be deferred until the person to be treated is mature enough to provide informed consent;
- explicitly establish the legal obligation for medical professionals with regards to all surgical and other interventions that aim to alter the genitals, gonads, reproductive organs or any hormonal set-up:
  - to inform the mature individual comprehensively about the treatment, including other possible medical options and details about risks and possible long-term consequences and effects based on up-to-date medical information;
  - in case of urgent, non-deferrable treatment on a child, which is not driven by social factors or a desire for legal certainty, inform the child’s parent(s) or legal guardian(s) comprehensively about the treatment, including other possible medical options and details about risks and possible long-term consequences and effects based on up-to-date medical information;
  - provide detailed minutes of the consultation including all of the above information, which are handed out to the patient or their parent(s) or legal guardian(s);
  - include these minutes in the intersex person’s medical records.
- encourage the inclusion of legal cases about the human rights of intersex people in medical legal curricula and exams.

Malta (2015) Gender Identity, Gender Expression and Sex Characteristics Act

A person who was granted international protection in terms of the Refugees Act, and in terms of any other subsidiary legislation issued under the Refugees Act, and who wants to change the recorded gender and first name, if the person so wishes to change the first name, shall make a declaration confirmed on oath before the Commissioner for Refugees declaring the person’s self-determined gender and first name. The Commissioner for Refugees shall record such amendment in their application form and protection certificate within fifteen days.

133 See footnote 101, interview with Vincent Guillot.
134 See footnote 113, interview with Pol Naidenov.
135 See Appendix for details of this case law; in France another two cases were filed. The first case, by an intersex person who had been subjected to unconsented castration and “feminising” genital surgery as a child, on the basis of the article 222-10 of the Penal Code on the ground of aggravated violence resulting in mutilation or permanent disability. The case was rejected by the Court of Cassation (the highest court in France) on the 8th or March 2018 because the statutes of limitation had expired, see: B. Moron-Puech, « Rejet de l’action d’une personne intersexuée pour violences mutilantes. Une nouvelle « mutilation juridique » par la Cour de cassation », La Revue des Juristes de Sciences Po, juin 2018, p. 71-104 https://www.cndcp.org//fr/pdf/presse/la_revue_des_juristes_de_science_po_120_71-104.pdf
Interagency statement, p. 15-16, see Appendix.

Eliminating forced, coercive and otherwise involuntary sterilization. An


obstacles in seeking reparation and redress.

human rights will be disregarded and they face significant

acknowledge the existence of intersex people, their
treatments. As long as society and States do not
continue to be victims of structural discrimination and
violence. Access to redress remains limited as long as society and States wrongly consider the human rights violations of intersex people to be rightful or helpful treatments. As long as society and States do not acknowledge the existence of intersex people, their human rights will be disregarded and they face significant obstacles in seeking reparation and redress.

WHAT TO DO?
The 2013 Malta Declaration, which contains the joint demands of the international intersex community, calls on States to:
- recognise that medicalisation and stigmatisation of intersex people result in significant trauma and mental health concerns.
- provide adequate acknowledgement of the suffering and injustice caused to intersex people in the past.
- provide adequate reparation, reparation, access to justice and the right to truth.

The 2017 Yogyakarta Principles Plus 10 elaborate in detail on how to establish these rights for victims of violations on the basis of sexual orientation, gender identity, gender expression and sex characteristics.136 The 2014 interagency statement Eliminating forced, coercive and otherwise involuntary sterilization by OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO includes a list of recommendations to States on how to best provide remedies and redress.137

The harm that has been and is still being inflicted on intersex people is, in effect, a societal problem and as such, it is society’s responsibility. As with the sterilisation of people with disabilities, the medical setting provides the space where societal norms and notions come into effect with devastating consequences for the individual. As long as their healthy bodies and sex characteristics are not recognised in their own right but instead as disordered male or female bodies, intersex people are and will continue to be victims of structural discrimination and violence. Access to redress remains limited as long as society and States wrongly consider the human rights violations of intersex people to be rightful or helpful treatments. As long as society and States do not acknowledge the existence of intersex people, their human rights will be disregarded and they face significant obstacles in seeking reparation and redress.

DATA COLLECTION:
Addressing research gaps

There has been a promising increase in sociological, non-medicalised studies regarding the situation of intersex people over the past few years, most of them conducted in collaboration with intersex organisations and intersex people, acknowledging and remunerating their expertise. However, there is still a substantial lack of data and surveys regarding the living situation of intersex individuals.138

The most pressing research gaps include:
- Experiences of normalising practices.
- Ill-treatment and violence in medical settings.
- Statistical data on the number of intersex-related surgeries and other medical interventions in infancy and childhood.
- Statistical data on the long-term health effects (including impairments) of surgeries and other medical treatment in infancy and childhood.
- Trauma and mental health.
- Experiences with supportive environments and/or services in all areas of life (family, health-care, education, work etc.).
- School dropout and bullying.
- Facing stigma and harassment in every day life, at school and in employment.

But the challenge not only lies in gathering the data. Correct contextualisation is key for the validity of the findings, which cannot happen when intersex people are not meaningfully involved in all stages of research projects. In past studies which failed to adequately involve intersex people, significant methodological flaws were the result, including biased sampling, failure to adequately account for or address researcher-participant power dynamics, poor instrument design, and misinterpretation of results. All of these issues can be addressed when intersex people are involved throughout the process.


WHAT TO DO?

There are some parameters, which, when taken into account, have proven to increase the usefulness of research findings on intersex people and foster the development of targeted research approaches:

- Research on the situation of intersex people must ask about experiences, not about identity.
- Intersex people should not be researched only as a subgroup of LGBTI but as an independent part of the population; data disaggregation is key.
- Working together with intersex-led organisations and intersex-led peer support groups is vital for increasing the reach of studies on intersex people.
- Consulting with intersex activists and organisations is important.
- When creating questionnaires to avoid pitfalls that lead to inaccurate data.
- When analysing and contextualising the data to increase the accuracy of the analysis.

FUNDING - CREATING SUSTAINABILITY

Despite the fact that intersex activism made its first steps in the mid 90s, it is only since 2015 that intersex-led human rights organisations have started to receive some funding. However, intersex organisations in Europe (and world-wide) are still heavily underfunded and under-resourced. To date, only a handful of NGOs in Europe receive enough funding to hire (part-time) staff.

According to the 2018 Global Resources Report for 2015/16, the total funding for work related to intersex people and intersex people’s rights in Western Europe and Eastern Europe, Russia and Central Asia was $0 USD (zero dollars) in 2013-2014 out of $50,640,313 USD for the LGBTI movements overall in these two regions. This increased to $161,711 USD for Eastern Europe, Russia and Central Asia and to $607,042 USD for Western Europe for the time-period of 2015-2016 (out of $19,336,445 USD and $37,510,193 USD for the LGBTI movements overall for these two regions, respectively). However, only a fraction of this already small amount went to intersex-led organisations.

Another 2017 funding report on the state of intersex organisations found that many intersex-led human rights organisations had applied for funding unsuccessfully. About half (52.8%) of those organisations reported that donors told them that intersex people were not a key population for their work. Due to lack of opportunity and human resources, very few organisations and groups applied for or received any form of government funding.

The survey also found that intersex organisations play a key role in advancing the life situation of intersex people and that they work successfully in many different areas at the same time: more than eight in ten (85.4%) of the organisations or groups engaged in advocacy, community organising or health provider educational activities. Almost three-quarters (73.2%) provided peer support, social services or engaged in individual-level advocacy.

When asked what work they would like to do but are precluded from doing for lack of resources, intersex groups most wanted to expand their work at local and national levels in the area of community organising (34.1%), campaigning (26.8%) and base-building activities (26.8%); however, they were hindered from pursuing these activities due to a lack of resources.

Volunteer work is the fragile pillar of all intersex organisations’ activities so far. Volunteer activism leads key activists to burn out, requires them to accept financial insecurity and does not provide for enough human resources. This is not a sustainable situation, neither for intersex activism, nor for States who want to benefit from the knowledge and expertise, as well as the expert services (trainings, peer support, counselling, awareness raising), which only intersex organisations and groups can provide.

143 See: Astraea, GATE (2017), p. 7. When analysing the kind of grants the survey found that intersex groups are most likely to receive intersex or LGBTI-specific funding from foundations and larger NGOs as sub-grants and that they did receive almost no government funding. Of the nearly two-thirds (64.3%) of intersex groups that received any external funding, a total of twenty-seven groups, the most common sources were foundation funding (55.6%) and sub-grants from larger NGOs (26%); see ibid., p. 7 https://www.astraeafoundation.org/publication/state-intersex-organising-2nd-edition/.
WHAT TO DO?

OII Europe and ILGA-Europe, in conjunction with the key recommendations from the funding reports mentioned above, call on States to:

- fund work led by intersex people.
- provide flexible and stable funding to intersex organisations and groups.
- provide sufficient funding for paid staff, and invest in anti-trauma work and burnout prevention.
- invest in the organisational strengthening of intersex organisations and groups.
- support intersex activists to build community and national-level work, while they continue to advance work at the international level.
- educate funding institutions and peers about intersex people and the human rights violations they experience and challenges they face in society.
- decrease the barriers for intersex groups in finding and applying for funding, particularly by explicitly addressing calls for proposals to intersex organisations and groups and funding unregistered groups through intermediaries.

Promoting the human rights of and eliminating discrimination against intersex people
7.2.2. support civil society organisations working to break the silence around the situation of intersex people and to create an environment in which intersex people feel safe to speak openly about their experiences;

European Parliament (2019): Intersex Resolution
5. Calls on the Commission and the Member States to increase funding for intersex civil society organisations;