



Human Rights eBrief

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Introduction

Many different words and labels are used to describe ‘intersex’. The UN describes intersex people as ‘born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies.’¹ In medical contexts, other terms such as ‘disorders of sex development (DSD)’ might be preferred.² All of these terms are contentious.³ For the purposes of this brief, we will use the term ‘intersex’ as this is the term that is found in most human rights documents on this issue.

All people have inherent human rights, simply because we exist. There is no special test a person must meet before they gain these rights. Human rights impose responsibilities and obligations on duty bearers to protect and realise these rights. States are one example of such a duty bearer, but we all also individually are responsible to each other to safeguard our individual and collective rights. Therefore, both State sovereignty and individual behaviours can be restricted in order to prevent a breach of human rights.⁴ As a result, human rights can be viewed as a means to ensure justice. The language of human rights has become one way to discuss abuses in a manner which is considered apolitical, providing the final defence for a person against harm.⁵

It is not surprising that human rights have become a cornerstone of the strategies employed by intersex advocates and activists over the past decade or so. Articulating their demands using human rights language has ensured that they are readily understood. There are a number of such statements from intersex organisations and advocates such as the Malta Declaration (2013),⁶ the Statement of Riga (2015),⁷ the Vienna Statement (2017),⁸ the Darlington Statement (2017),⁹ the Public Statement by the African Intersex

¹ United Nations for LGBT Equality, ‘Fact Sheet Intersex’.

² Hughes et al., ‘Consensus Statement on Management of Intersex Disorders’.

³ Davis, ‘The Power in a Name’; Reis, ‘Divergence or Disorder?’

⁴ Cohen, ‘Minimalism About Human Rights: The Most We Can Hope For?’ At p195.

⁵ Brown, “‘The Most We Can Hope For...’: Human Rights and the Politics of Fatalism”.

⁶ Participants in the Third International Intersex Forum, Malta, ‘Malta Declaration’.

⁷ Participants in the Meeting of European Intersex Organisations, ‘Statement of Riga’.

⁸ Participants in the First European Intersex Community Event, ‘Vienna Statement of the 1st European Intersex Community Event’.

⁹ Australia and Aotearoa/New Zealand Intersex Community Organisations and Independent Advocates, ‘Darlington Statement’.



Movement (2017),¹⁰ the Asian Intersex Statement (2018)¹¹ and the Statement of San José de Costa Rica (2018).¹²

Strategically, this has been successful and many organisations at international, regional and national levels have issued statements or engaged on intersex issues through a human rights frame.

There are many resources available that chart the manner in which intersex activists engage with human rights principles.¹³ This brief has a different purpose. Here we aim at charting the sources of those rights protections at the international, regional and national levels. This eBrief examines intersex issues through the lens of human rights law to ascertain how human rights frames intersex justice, and how these rights might be achieved practically in the everyday lives of people with intersex variations. This is not an exhaustive project. To ensure the eBrief remains brief, we narrow our discussion to the European and Inter-American regions, and only highlight some selected national contexts where there have been relevant legal developments at national level related to the protection of intersex people.

¹⁰ Participants in the First African Intersex Meeting, 'Public Statement by the African Intersex Movement'.

¹¹ Participants in the First Asian Intersex and Forum, 'Asian Intersex Movement Public Statement'.

¹² Participants in the First Latin American and Caribbean Conference of Intersex Persons, 'Statement of San José de Costa Rica'.

¹³ United Nations for LGBT Equality, 'Fact Sheet Intersex'; Office of the United Nations High Commissioner, 'Background Note Human Rights Violations against Intersex People'; European Union Agency for Fundamental Rights, 'FRA Focus Paper: The Fundamental Rights Situation of Intersex People'; Council of Europe Commissioner for Human Rights, 'Human Rights and Intersex People: Issue Paper'; OAS, 'On International Intersex Awareness Day, the IACHR Calls on States to Protect the Right to Health of Intersex Persons'; IACHR and OAS, 'Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas'.



International Level

The extent to which international law can achieve meaningful realisation of rights in everyday life within domestic legal systems is debatable. Much depends on the source of the right, whether it is in a treaty which an individual state has signed, ratified and implemented; whether signing a treaty automatically make the treaty obligations part of domestic law, or whether some additional steps need to be completed prior to the rights being actionable, i.e. enabling a person to bring a claim before a domestic court on the basis of the right. Nonetheless, international human rights mechanisms create opportunities for advocates to bring legitimacy and weight to their claims.

United Nations

Intersex activists have been campaigning to raise awareness and change practices relating to intersex rights since the early 1990s.¹⁴ While there are a number of human rights which relate to intersex issues, it is only since 2009 that the UN has engaged with intersex human rights issues explicitly.¹⁵ In particular, unnecessary medical and/or surgical interventions which have not been consented to by intersex people themselves may contravene the right to bodily integrity and security of person, and also the non-derogable prohibition on torture or cruel, inhuman or degrading treatment or punishment as outlined in Article 5 of the Universal Declaration of Human Rights (UDHR), Article 7 of the International Convention on Civil and Political Rights (ICCPR), Article 37(a) of the Convention on the Rights of the Child (CRC) and Article 17 of the Convention on the Rights of Persons with Disabilities (CRPD). While these interventions may be consented to by parents, albeit often with limited information and lack of awareness of other options, the UN together with other regional monitoring bodies have made it clear that in relation to these kinds of medical interventions, only the consent

¹⁴ Human Rights Watch and InterAct, "I Want to Be like Nature Made Me" Medically Unnecessary Surgeries on Intersex Children in the US'.

¹⁵ United Nations, 'Concluding Observations of the Committee on the Elimination of Discrimination against Women to Germany. Forty-Third Session. 19 January-6 February 2009.'



of the intersex individual themselves is appropriate.¹⁶ There is limited understanding of the long-term outcomes of these interventions, and what is known is largely through personal testimonies. Where there is a lack of data on the ongoing health outcomes of these interventions,¹⁷ these may also be classified in some instances as medical experimentation and without the consent of the individual may contravene the right to freedom from medical experimentation in Article 7 of the ICCPR and Article 15 of the CRPD.¹⁸

A major focus of the statements made by the UN about intersex issues concerns medically unnecessary interventions which have not been consented to by the individual intersex person receiving the interventions,¹⁹ while the many of discussions in medical literature about intersex revolve around treatment of paediatric patients.²⁰ Most countries have mechanisms to enable a parent to consent as legal proxy to medical interventions on their child, particularly where the child is considered to lack the legal capacity to consent themselves as they are too young and/or immature. Thus advocating for the rights of intersex children can be interpreted as conflicting with the rights of parents to make decisions for their children. States can be reluctant to intervene in legislation to limit parental rights. Likewise, children's rights can be interpreted as synonymous with parental rights such that informed consent is interpreted as being the informed consent of the parents which is

¹⁶ Office of the UN High Commissioner for Human Rights, 'Intersex Awareness Day – Wednesday 26 October 2016: End Violence and Harmful Medical Practices on Intersex Children and Adults, UN and Regional Experts Urge'.

¹⁷ Lee et al., 'Global Disorders of Sex Development Update since 2006'.

¹⁸ Ní Mhúirthile, 'Recent Reforms in LGBTI Rights in Ireland: Tightening the Tourniquet in the Rights of Vulnerable Intersex People'.

¹⁹ Office of the United Nations High Commissioner, 'Background Note Human Rights Violations against Intersex People'; Office of the United Nations High Commissioner for Human Rights and others, 'UN Interagency Statement - Eliminating Forced, Coercive and Otherwise Involuntary Sterilization'; UN General Assembly, 'Discriminatory Laws and Practices and Acts of Violence against Individuals Based on Their Sexual Orientation and Gender Identity'; UN Human Rights Council, 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'; UN Human Rights Council, 'Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Vitit Muntarbhorn'; UN Human Rights Council, 'Artificial Intelligence and Privacy, and Children's Privacy: Report of the Special Rapporteur on the Right to Privacy, Joseph A. Cannataci'.

²⁰ See for example Hughes et al., 'Consensus Statement on Management of Intersex Disorders'; Lee et al., 'Global Disorders of Sex Development Update since 2006'.



then understood to fulfil the obligation towards accounting for the child's rights.

Under international human rights law, it is clear that parents do not enjoy absolute control over their children. Rather they have an obligation and responsibility to assist their children to realise their rights, to respect both the evolving capacity of their child, and the ability of their child to make decisions, as the child grows and develops.²¹ For this to be possible, to maintain an open future where their child is in a position to best realise their own rights, some decisions can never be made by a parent or guardian and therefore fall outside of the scope of parental rights.²² Arguably human rights law is not strong enough to protect the future participatory rights of children. While Sandberg argues that in the CRC, decisions made with long lasting consequences where they could be postponed are not reconcilable with the right to be participate in decisions (Article 12), the right to identity (Article 8), and will be contrary to the best interests of the child (Article 3).²³ In practice in intersex interventions the concept of the 'best interests of the child' tends to be interpreted by parents and other decision-makers to act and thereby foreclose future participatory rights.

Article 5 of the CRC recognises the child's evolving capacity in the exercise of their rights. Recognition of a child's evolving capacity acknowledges that parents and guardians are not the only people who can determine the best interests of the child and they must provide space for the child to increasingly participate in the realisation of their rights.²⁴ While the best interests of the child are a primary consideration under Article 3(1), the Committee on the Rights of the Child notes that this is to be achieved complementarily to Article 12 on the right of the child to be heard: 'In fact, there can be no correct application of Article 3 if the components of Article 12 are not respected. Likewise, Article 3 reinforces the functionality of Article 12, facilitating the essential role of children in all decisions affecting their lives.'²⁵ In

²¹ Tobin and Varadan, 'Article 5: The Right to Parental Direction and Guidance Consistent with a Child's Evolving Capacities'.

²² See for example: *Re J (Child's Religious Upbringing and Circumcision)*, [2000] 1 FCR 307.

²³ Sandberg, 'Intersex Children and the UN Convention on the Rights of the Child'.

²⁴ Tobin and Varadan, 'Article 5: The Right to Parental Direction and Guidance Consistent with a Child's Evolving Capacities'. At p175.

²⁵ UN Committee on the Rights of the Child, 'General Comment No. 12 (2009): The Right of the Child to Be Heard'. At 74.



circumstances where decisions can be delayed, these should not deliberately be made early on with the knowledge that the child is too young to consent as this cannot support the best interests of the child.²⁶ Nevertheless, even where states have intervened, there is still a notable reluctance to introduce protections that do not involve parents and multidisciplinary teams being able to make decisions on behalf of the intersex child.²⁷ William Simmons argues the human rights system often serves to ‘cauterize’ the ‘marginalized Other’, as they become voiceless and their needs not served when others (politicians, academics, judges) come forward to represent them.²⁸ In light of this critique of silencing the voices of those who most need active protection of their human rights, states should do more to seek the child’s views and allow them to self-ascribe their own interests, or protect the child from decisions being made that foreclose their ability to have a view in the future.

The idea that ordinary human rights provisions already include protection for intersex people without the need for any special convention or statements was confirmed in the Yogyakarta Principles and the Yogyakarta Principles plus 10.²⁹ It is important to note that the Yogyakarta Principles are not an international treaty, therefore they are not formally supported by any State

²⁶ UN Committee on the Rights of the Child, ‘General Comment No. 7 (2005): Implementing Child Rights in Early Childhood’. At 17.

²⁷ In Malta, the Gender Identity, Gender Expression and Sex Characteristics Act, 2015., (2015) Article 14(2) allows for an interdisciplinary team and a minor’s parent/guardian to provide consent in exceptional circumstances (but cannot be based on ‘social factors’); in Iceland the Act on Gender Autonomy No 80 /2019 as amended by Act No. 159/2019, No. 152/2020 and No. 154/2020., Articles 9 and 11, a committee can allow for interventions for the best interests of the child with the consent of the child’s guardian (but not for ‘social, psychosocial and appearance-related reasons’ where the view of the child cannot be determined); and in Germany Gesetz zum Schutz von Kindern mit Varianten der Geschlechtsentwicklung (Law on the Protection of Children With Variations of Sex Development)., Article 1631e provides that an interdisciplinary commission can determine whether the intervention is in the best interests of the child, and parents can bring this opinion to the Family Court to grant permission for intervention where it is in the best interests of the child.

²⁸ Simmons, *Human Rights Law and the Marginalized Other*. Chapters 1 & 2.

²⁹ International Committee of Jurists, ‘Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity’; International Committee of Jurists, ‘Yogyakarta Principles plus 10: Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles’.



through signature. Nor do the Principles set out any new rights. These principles describe how existing human rights applies in the context of issues relating to sexual orientation and gender identity. The review of the Principles on their tenth anniversary, expanded this to include also a focus on gender expression and sex characteristics.³⁰ This expansion was welcomed by intersex advocates as moving the conversation from a focus on diverse identities to encompassing also a focus on diverse bodies.³¹ This is important as it enables an overt consideration of the impact of human rights on intersex experience. Taken together, the Yogyakarta Principles and the Yogyakarta Principles plus 10 include a number of principles which are directly relevant to intersex issues: equality and non-discrimination (Principle 2); security of the person (Principle 5); privacy (Principle 6); freedom from torture, cruel, inhuman or degrading treatment or punishment (Principle 10); right to the highest attainable standard of health (Principle 17); protection from medical abuses (Principle 18); right to effective remedies and redress (Principle 28); right to State protection (Principle 30); right to legal recognition (Principle 31); bodily and mental integrity (Principle 32) and the right to truth (Principle 37).

The Office of the High Commissioner of Human Rights (OHCHR) is the department of the UN that works on promoting human rights and supports the UN Human Rights Council and treaty monitoring bodies. The OHCHR has been increasingly vocal about intersex human rights issues. In a report in 2011 on 'Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity', non-consensual interventions on intersex children are mentioned albeit briefly.³² In 2014, the OHCHR was one of a number of authors of a UN interagency statement, led by the World Health Organization, on eliminating forced,

³⁰ International Committee of Jurists, 'Yogyakarta Principles plus 10: Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles'.

³¹ Carpenter, 'Intersex Human Rights, Sexual Orientation, Gender Identity, Sex Characteristics and the Yogyakarta Principles plus 10'.

³² UN General Assembly, 'Discriminatory Laws and Practices and Acts of Violence against Individuals Based on Their Sexual Orientation and Gender Identity'. At para 57.



coercive and otherwise involuntary sterilisation.³³ Furthermore, former UN High Commissioner for Human Rights, Mary Robinson, was one of the signatories to the Yogyakarta Principles. The OHCHR has steadily progressed in its support for and promotion of intersex rights, convening a special expert meeting on the issue in 2015,³⁴ and working ultimately towards the publication of the background note on intersex rights published in 2019.³⁵

The UN Human Rights Council (HRC) is 'an inter-governmental body within the United Nations system made up of 47 States responsible for the promotion and protection of all human rights around the globe.'³⁶ One way the HRC carries out their duties is through its reports and recommendations to member states. In a 2019 resolution the UN Human Rights Council expressed concern at the discriminatory regulations that impact women and girls with differences of sex development.³⁷ By the time it published its report on discrimination in sport the following year, the OHCHR has refined its language to use the term 'sex characteristics' and it outlined how female eligibility regulations contravened the rights of people with variations in sex characteristics to a number of human rights as outlined previously, and also the right to work and to the enjoyment of just and favourable conditions of work.³⁸

The Human Rights Council has Special Procedures, experts who are independent of governments or organisations. Their role includes reporting and advising on human rights that relate to their thematic or country-specific mandate. A number of Special Procedures have mandates that impact on issues affecting intersex people. Former Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan Mendez,

³³ Office of the United Nations High Commissioner for Human Rights and others, 'UN Interagency Statement - Eliminating Forced, Coercive and Otherwise Involuntary Sterilization'.

³⁴ Zeid Ra'ad Al Hussein, 'Opening Remarks by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights at the Expert Meeting on Ending Human Rights Violations Against Intersex Persons'.

³⁵ Office of the United Nations High Commissioner, 'Background Note Human Rights Violations against Intersex People'.

³⁶ Office of the United Nations High Commissioner, 'United Nations Human Rights Council'.

³⁷ UN Human Rights Council, 'Elimination of Discrimination against Women and Girls in Sport'.

³⁸ Office of the United Nations High Commissioner for Human Rights, 'Intersection of Race and Gender Discrimination in Sport'. At para 34.



for example, has made a number of remarks calling upon states to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalising surgery, involuntary sterilisation, unethical experimentation, medical display, ‘reparative therapies’ or ‘conversion therapies’, when enforced or administered without the free and informed consent of the person concerned.³⁹ The same Special Rapporteur has also noted that when harm is caused to intersex people in healthcare settings through interventions conducted without their express, individual consent, this can come within the meaning of torture.⁴⁰

The Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental Health has also called upon states to ‘postpone non-emergency invasive and irreversible interventions until the child is sufficiently mature to provide informed consent’ and highlighted that this was particularly important in the context of intersex children.⁴¹

Both of these Special Rapporteurs have also reached out to non-state bodies, such as medical and sporting bodies calling for better protections for the rights of intersex persons.⁴² These actions show a willingness to engage non-state actors in the treatment of intersex people. Ultimately however these mechanisms have no ability to enforce compliance and it does not appear that these communications have received a response.

³⁹ Mendez, ‘Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment A/HRC/22/53’.

⁴⁰ UN Human Rights Council, ‘Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’. At para 50.

⁴¹ Grover, ‘Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover A/64/272’. At para 49.

⁴² UN Special Rapporteurs on the Right to the Highest Attainable Standard of Physical and Mental Health and to Freedom from Torture, Cruel, Inhuman and Degrading Treatment or Punishment, ‘Communication to Dr Agliano, Chair of American Medical Association Council on Ethical and Judicial Affairs’, 1 February 2018; UN Special Rapporteurs on the Right to the Highest Attainable Standard of Physical and Mental Health and to Freedom from Torture, Cruel, Inhuman and Degrading Treatment or Punishment, ‘Communication to Mr Coe, President International Association of Athletics Federations’, 18 September 2018; UN Special Rapporteurs on the Right to the Highest Attainable Standard of Physical and Mental Health and to Freedom from Torture, Cruel, Inhuman and Degrading Treatment or Punishment, ‘Communication to Dr Kraft, American Academy of Pediatrics’,



The Special Rapporteur on the Right to Privacy has noted that difficulties accessing birth certificates which correctly reflect the identity of intersex people can cause challenges for attaining ‘dignity, identity, privacy and development for transgender and intersex children’.⁴³ In the same document, he notes that children with variations in sex characteristics can be subject to violence, discrimination, harassment, pathologisation of their body and unnecessary medical treatment, as well as publication of details about their genitalia, stigmatisation and withholding of specific health services.⁴⁴

By contrast both holders of the mandate as Independent Expert on Sexual Orientation and Gender Identity, have been broadly supportive of intersex rights, but cautious about extending their mandate to cover intersex issues except where there ‘is a link with sexual orientation and gender identity’.⁴⁵

On different occasions, other the UN mechanisms, such as the Human Rights Council via the Universal Periodic Review (UPR) process and the UN treaty body mechanisms, have called out states for their failure to adequately protect the rights of intersex people. Intersex issues have been referred by the UN Human Rights Council’s during the UPR ever since 2011 adding more than 600 UPR recommendations concerning the rights of intersex people.⁴⁶ Similarly, to date, there are more than 500 treaty bodies concluding observations mentioning the rights of intersex people.

There has been a significant increase in the amount of visibility and awareness of intersex issues within the international human rights system over the past decade. This brief now turns to an examination of the engagement with intersex rights at regional level. More on the protections at national level will be outlined under the discussion of various countries below.

⁴³ Cannataci, ‘Annual Thematic Report: Artificial Intelligence and Privacy, and Children’s Privacy. A/HRC/49/55’. At para 103.

⁴⁴ Cannataci. At para 98(c).

⁴⁵ UN Human Rights Council, ‘Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Vitit Muntarbhorn’. At para 6.

⁴⁶ Ravesloot, ‘The Universal Periodic Review beyond the Binary Advancing the Rights of Persons with Variations in Sex Characteristics’.



Regional Level

Europe

Council of Europe

The Council aims to foster democracy, human rights, and rule of law in Europe. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) enshrines the human rights granted to the people of the member states of the Council. Article 3 of the Convention explicitly prohibits any form of torture, inhuman or degrading treatment or punishment. Further, Article 14 states that every person is entitled to enjoy their rights and freedom set out in the Convention, without being discriminated against on ‘any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.’ It also guarantees everyone the right to respect for private and family life, home, and correspondence under Article 8. This provision has been interpreted to include the right to private social life and personal development, which is inclusive of both the personality and personal autonomy of the individual.⁴⁷ While the right to health is not explicit in the text of the ECHR, the European Court of Human Rights (ECtHR) has interpreted that positive obligations to preserve the life, health and wellbeing of individuals arise from Article 8 (respect for private life), Article 2 (right to life) and in limited circumstances Article 3.⁴⁸ Another important issue to highlight is that the Council of Europe’s Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, “the Oviedo Convention” of 1997 has recognised the right to provide voluntary, prior and informed consent in medical settings. These instruments have no specific provision that concerns the rights and protection of intersex people. However, as human rights and freedoms are universal and apply to everyone, the violation of these provisions against intersex people is equally condemnable.

⁴⁷ *Bărbulescu v. Romania* (Application no. 61496/08), ECHR 12 January 2016; *Botta v. Italy* (Application number 153/1996/772/973), ECHR 24 February 1998.

⁴⁸ *Arskaya v. Ukraine*, Application no. 45076/05; *Vavříčka and Others v. the Czech Republic* [GC] Applications nos. 47621/13 and 5 others. At para 282; *Paposhvili v Belgium* (Application no. 41738/10). At paras 174-175.



The human rights monitoring bodies of the Council have also been operating to protect vulnerable groups like intersex people. Over the past decade, the Council has taken various measures and made recommendations to protect the human rights of intersex people. The year 2013 marked the first time the Parliamentary Assembly of the Council of Europe raised the issues faced by intersex children in its resolution number 1952 concerning Children’s Right to Physical Integrity.⁴⁹ It showed concern towards the violation of the physical integrity of intersex children by altering their bodies without their informed consent. In 2015, the Commissioner for Human Rights of the Council of Europe published an issue paper that solely dealt with the issues and discrimination faced by intersex people. This was the first occasion the Council exclusively investigated the issues faced by intersex people. In this issue paper the Commissioner provided eight brief recommendations to promote and protect the human rights of intersex people.⁵⁰ The 2015 issue paper was followed by Resolution 2191 ‘Promoting the human rights of and eliminating discrimination against intersex people’ which was published by the Parliamentary Assembly in 2017. The Parliamentary Assembly devised various measures for the member states to adopt for the protection of human rights and the welfare of the intersex community.⁵¹

All the measures and recommendations given by the various Council of Europe instruments have highlighted the importance of providing intersex people with the right to bodily autonomy, physical integrity, and self-determination.⁵² It has been reiterated time and again by the Council of Europe that unnecessary medical interventions do not only harm the rights of intersex people but also has a long-lasting impact on their physical and mental health, hence recommending the abolition of sex ‘normalising’ treatments without the free and informed consent of the concerned

⁴⁹ Parliamentary Assembly of the Council of Europe, ‘Resolution 1952: Children’s Right to Physical Integrity’.

⁵⁰ Council of Europe Commissioner for Human Rights, ‘Human Rights and Intersex People: Issue Paper’.

⁵¹ Parliamentary Assembly of the Council of Europe, ‘Promoting the Human Rights of and Eliminating Discrimination against Intersex People. Resolution 2191’.

⁵² Parliamentary Assembly of the Council of Europe, ‘Resolution 1952: Children’s Right to Physical Integrity’. At para 5; Parliamentary Assembly of the Council of Europe, ‘Promoting the Human Rights of and Eliminating Discrimination against Intersex People. Resolution 2191’. At p31-32.



individual. The recent case of *M v. France*,⁵³ which even though was declared inadmissible on the ground of non-exhaustion of domestic remedies by the ECtHR, observed that any medical act carried out without therapeutic necessity and without the informed consent of the concerned person can lead to ill-treatment, which is in violation of Article 3 of the ECHR.⁵⁴

The Council has also highlighted that to ensure that intersex people can enjoy the right to bodily autonomy fully it is necessary to make sex assignment treatment available to them when they reach an age where they can give free and informed consent for treatments and surgeries.⁵⁵ As much as an intersex person shall be protected from undergoing unnecessary medical intervention without their consent, they shall also be respected to make decisions to either undergo or not to undergo such treatments when they are fully informed and free to make such decisions. The recommendations have also emphasised the right to adequate interdisciplinary counselling and support to the concerned individual, their family, and other concerned people.⁵⁶ The Council has observed that it shall be ensured that intersex people have access to their medical records and also access to medical assistance without being treated disrespectfully or shamed.⁵⁷

The Commissioner has acknowledged the observation made by the UN Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that discrimination based on sex characteristics can lead to the dehumanisation of the concerned person and can be classified as torture and inhuman treatment enshrined under Article 3 of the ECHR. The Commissioner and the Parliamentary Assembly have also requested the member states to revise and amend their anti-discrimination laws to make them more inclusive of intersex persons.⁵⁸ It has been observed multiple times that most anti-discrimination laws do not include sex characteristics as a ground for discrimination, as is also the case with Article 14 of the ECHR, however, the

⁵³ *M v. France*.

⁵⁴ *M v. France*. At para 61.

⁵⁵ Council of Europe Commissioner for Human Rights, 'Human Rights and Intersex People: Issue Paper'. At p9, recommendation 1.

⁵⁶ Council of Europe Commissioner for Human Rights. At p10.

⁵⁷ Council of Europe Commissioner for Human Rights.

⁵⁸ Council of Europe Commissioner for Human Rights. At para 7.6; Parliamentary Assembly of the Council of Europe, 'Promoting the Human Rights of and Eliminating Discrimination against Intersex People. Resolution 2191'. At para 7.3.



list under Article 14 is not exhaustive. The Council has also observed that discrimination can be combatted by raising awareness among intersex people and other stakeholders about the possibility of dealing with discrimination under the prohibited grounds of sex or an 'other' (unspecified) ground.⁵⁹

One of the other rights which the Council has stressed is that concerning the intersex person's civil status and legal recognition.⁶⁰ The right to legal recognition provides intersex people with the right to self-determination, hence the Council has recommended amendments to make the procedures of gender assignment and reassignment, or not choosing any gender on the official documents, easier for the intersex people.⁶¹ This would create both a positive and a negative obligation on the state. First, not to force intersex people to reveal their gender identity and second, not to misinterpret their identity while recording or using it. The Council, at various stances, also dealt with the intersex person's right to privacy, to enter into civil partnerships and marriages, registration of sex at birth, and gender recognition.⁶²

European Union

The principles of equality and prohibition of discrimination have been reiterated in various treaties and policies of the European Union. Article 2 of the Treaty on European Union states that human dignity, freedom, equality, and respect for human rights are some of the founding values of the Union. The Treaty on the Functioning of the European Union has also reiterated the principles of equality and non-discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation.⁶³ The

⁵⁹ Parliamentary Assembly of the Council of Europe, 'Resolution 1952: Children's Right to Physical Integrity'. At p7; Parliamentary Assembly of the Council of Europe, 'Promoting the Human Rights of and Eliminating Discrimination against Intersex People. Resolution 2191'. Para 7.6.

⁶⁰ Parliamentary Assembly of the Council of Europe, 'Promoting the Human Rights of and Eliminating Discrimination against Intersex People. Resolution 2191'. At para 7.3.

⁶¹ Council of Europe Commissioner for Human Rights, 'Human Rights and Intersex People: Issue Paper'. At p9.

⁶² Council of Europe Commissioner for Human Rights. At p31-32; Parliamentary Assembly of the Council of Europe, 'Promoting the Human Rights of and Eliminating Discrimination against Intersex People. Resolution 2191'. At para 7.3.

⁶³ 'Treaty on the Functioning of the European Union'. Articles 8, 10, 19.



Charter of Fundamental Rights of the European Union has provided the right to respect for the physical and mental integrity of everyone, especially in the field of medicine, the concerned person must give free and informed consent if their mental or physical integrity is under consideration.⁶⁴ Article 4 of the Charter prohibits any form of torture and inhuman or degrading treatment or punishment. Further Article 21 deals with the non-discrimination clause, which even though does not include sex characteristics as one of the grounds for discrimination but is not an exhaustive list at well. The right to respect for one's private and family life,⁶⁵ and the right to protection of personal data,⁶⁶ are among various other rights enshrined in the Charter which are of interest to intersex people. Article 24 of the Charter is notably important for the protection of intersex children from unnecessary medical intervention as the provision states that all the actions that are taken by either public authorities or private institutions, that concern children, should be made keeping the concerned child's best interest in mind. Unnecessary medical interventions on the bodies of children to 'normalise' their sex, which has a long-lasting implication on their bodies and minds, have not been considered to be in the best interest of the children.

The different European Union institutions have taken various measures and published recommendations in the last decade to raise awareness and protect the rights of intersex people. The first-ever policy document published by the Council of the European Union (also known as Council of Ministers) which referred to intersex people and their rights was published in the year 2013, titled 'Guidelines to Promote and Protect the Enjoyment of all Human Rights by LGBTI Persons.'⁶⁷ In 2015, the European Commission published a list of actions to ensure equality for the LGBTI community.⁶⁸ The same year the European Union Agency for Fundamental Rights published a focus paper that solely dealt with the human rights situation of intersex people in Europe. Further, a resolution was passed by the European Union in 2019 on the rights of intersex people.⁶⁹

⁶⁴ 'Charter of Fundamental Rights of the European Union'. Article 3.

⁶⁵ 'Charter of Fundamental Rights of the European Union'. Article 7.

⁶⁶ 'Charter of Fundamental Rights of the European Union'. Article 8.

⁶⁷ The Council of the European Union, 'Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex Persons'.

⁶⁸ European Commission, 'List of Actions by the Commission to Advance LGBTI Equality'.

⁶⁹ European Parliament, 'The Rights of Intersex People. European Parliament Resolution of 14 February 2019 on the Rights of Intersex People'.



One of the issues which have been raised by all the instruments is concerning equality and non-discrimination, which are also principles established under the EU treaties and charters. The instruments have emphasised promoting equality and non-discrimination for the LGBTI community in the areas of healthcare, education, workplace, and detention facilities, to name a few.⁷⁰ It was recommended by the Council of the European Union that such laws and policies which are discriminatory against the intersex community shall be combatted by the member states.

The Union has strongly condemned the practice of unnecessary medical intervention on the bodies of intersex children without their full and informed consent, as it violates the intersex child's right to mental and physical integrity and their right to autonomy.⁷¹ The European Parliament has observed that such treatments and surgeries can have lifelong consequences of psychological trauma and physical disfigurement.⁷² It is the responsibility of the member states to guarantee intersex people the right to bodily integrity, autonomy, and self-determination.⁷³ The FRA and the European Parliament both have noted that intersex individuals and their parents shall have the right to psychological support services, counselling, and full information about the consequences of medical intervention on intersex bodies.⁷⁴ Further, the intersex people have been guaranteed the right to have access to their medical records for them to have full information about their intersex status and the medical treatments they have undergone.⁷⁵

With regard to self-determined gender identity, the Council of the European Union has observed that when a person is not given the right to be recognised

⁷⁰ The Council of the European Union, 'Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex Persons'. At para 19; European Union Agency for Fundamental Rights, 'FRA Focus Paper: The Fundamental Rights Situation of Intersex People'. At p7.

⁷¹ European Union Agency for Fundamental Rights, 'FRA Focus Paper: The Fundamental Rights Situation of Intersex People'.

⁷² European Parliament, 'The Rights of Intersex People. European Parliament Resolution of 14 February 2019 on the Rights of Intersex People'. At para D.

⁷³ European Parliament. At para 6.

⁷⁴ European Union Agency for Fundamental Rights, 'FRA Focus Paper: The Fundamental Rights Situation of Intersex People'. At para 3.

⁷⁵ European Parliament, 'The Rights of Intersex People. European Parliament Resolution of 14 February 2019 on the Rights of Intersex People'. At para 6.



by the choice of their gender, it leads to arbitrary treatment and discrimination.⁷⁶ The European Parliament has observed that for intersex people to exercise their right to self-determination, it is important to have a flexible birth registration process.⁷⁷ The FRA recommended that a gender-neutral marker should be introduced by the states for birth registration certificates, which can make it easier to record it for children whose sex is uncertain at the time of their birth.⁷⁸ Further, the procedure to amend gender markers and names on birth certificates and other documents shall be made flexible so that intersex people do not face any difficulty or discrimination while changing their details at a later stage of their lives.⁷⁹

This eBrief now turns to a consideration of intersex in the Inter-American region.

America

Inter-American System of Protection on Human Rights

The Inter-American system of human rights is composed of two main monitoring bodies as per the American Convention of Human Rights (ACHR), the Inter-American Court of Human Rights (IACtHR) and the Inter-American Commission (IACHR) on Human Rights.⁸⁰ While the first one has judicial competences to hear individual complaints alleging violations to the rights recognised in the American Convention on Human Rights (ACHR), the second one has quasi-judicial competences. On the one hand the IACHR serves as an advocate for victims and petitioners bringing individual petitions forward to the Court. On the other hand, the IACHR also serves as a monitoring body for the implementation and full realisation of the rights recognised in the ACHR and has competences to be in direct dialogue with OAS member states

⁷⁶ The Council of the European Union, 'Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex Persons'. At para 20.

⁷⁷ European Parliament, 'The Rights of Intersex People. European Parliament Resolution of 14 February 2019 on the Rights of Intersex People'. At para 9.

⁷⁸ European Union Agency for Fundamental Rights, 'FRA Focus Paper: The Fundamental Rights Situation of Intersex People'. At p7.

⁷⁹ European Parliament, 'The Rights of Intersex People. European Parliament Resolution of 14 February 2019 on the Rights of Intersex People'. At para 9.

⁸⁰ 'American Convention on Human Rights'.



governments and officials as well as with civil society organisations and human rights defenders.

In regard to the IACtHR there have been no developments at the regional level as the Inter-American Court has not yet faced an application related to the rights of intersex persons. For instance, while articles 1.1 and 21 of the ACHR contain the rights to non-discrimination and equal protections before the law and the Inter-American Court has interpreted both provisions to include sexual orientation and gender identity, it has not yet explicitly stated the recognition of sex characteristics as a protected ground against discrimination.⁸¹

By contrast, intersex issues have been considered by the Inter-American Commission on Human Rights. According to the ACHR the IACHR has the mandate to, amid other things, a) promote and raise awareness of human rights, b) make recommendations to governments in favour of human rights, c) conduct studies and reports and request information from governments concerning human rights, d) to respond to inquiries of the General Secretariat of the OAS and to submit annual reports to the General Assembly. As part of its mandate, back in 2011 the IACHR decided to give special emphasis to the monitoring and promotion of rights of lesbian, gay, bisexual, trans and intersex persons, an area that had been mostly invisible from their work until that point and created a specialised thematic unit. In 2015, this thematic unit became one of the special thematic Rapporteurships of the IACHR and a special rapporteur was selected to monitor human rights issues related to sexual orientation, gender identity and sex characteristics in the Americas.⁸²

Ever since the creation of the LGBTI Rapporteurship, the IACHR has given visibility to the gross human rights violations intersex people experience across the American continent. In 2015 the IACHR and the LGBTI Rapporteur included a specific section about intersex 'medical violence' on its first ever thematic report focused on violence against LGBTI persons. In the report the IACHR recognises the different forms of human rights violations experienced by intersex people because 'their bodies do not physically conform to socially

⁸¹ Case Atala Riffo and daughters v. Chile. Merits, reparations and costs.

⁸² OAS, 'About the Rapporteurship on the Rights of Lesbian, Gay, Trans, Bisexual, and Intersex Persons'.



accepted standards for “female” and “male” bodies’.⁸³ The IACHR also heard intersex activist claims that ‘have indicated that human rights violations suffered by intersex persons are different from the human rights violations which lesbians, gays, bisexuals and trans persons typically suffer.’⁸⁴ The Commission raised its concerns about the fact that ‘sex assignment’ and genital surgeries that are carried out without the informed consent of intersex children are standard practice in countries across the American continent. Likewise, the Commission expressed concerns about the fact that these surgeries cause intersex children great harm, are irreversible, have consequences that extend into adulthood including: ‘chronic pain, life-long trauma, sterilisation, genital insensitivity, and diminished or lost capacity for sexual pleasure.’⁸⁵

In its report the IACHR highlighted that the principle of free, prior and informed consent should guide the decisions concerning a person’s body and medical treatments. In this line of thinking, it recommended the member states of the Organization of American States, in line with the CADH, to ‘make necessary amendments to policy and law to prohibit medically unnecessary procedures on intersex persons, when it is administered without the free informed consent of the intersex person.’⁸⁶

In line with its mandate the Inter-American Commission also issued a series of recommendations to OAS member states based in the information received from intersex activist organisations and human rights defenders. The IACHR urged states to: ‘(i) conduct trainings of medical personnel and medical community in order to provide adequate treatment and support to intersex persons and their families; (ii) create multidisciplinary groups to provide support and counselling to parents and relatives of intersex children and infants and to provide care and support to intersex persons from childhood into adolescence and adulthood; (iii) conduct awareness-raising and sensitisation campaigns at the national level on the short term and long-term effects of “normalising” interventions on intersex children; and (iv) carry out educational campaigns in conjunction with the ministries of education in

⁸³ IACHR and OAS, ‘Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas’. At para 182.

⁸⁴ IACHR and OAS. At para 186.

⁸⁵ IACHR and OAS. At para 186.

⁸⁶ IACHR and OAS. At para 194.



order to bring down stereotypes, stigma and invisibility surrounding intersex persons.⁸⁷

Another way in which the Inter-American Commission is raising visibility about intersex human rights is through its press releases which serve to disseminate human rights standards to the general public and OAS member states in a general matter. Every year since 2016 the Commission has participated in Intersex Awareness Day raising visibility of intersex issues.⁸⁸ The IACHR has also held public thematic hearings where intersex people and activist can voice their concerns directly to governments and the general public regarding their rights situation.⁸⁹

Lastly, we consider it is also important to mention the recognition of intersex rights by the General Assembly of the Organization of American States (OAS GA). While this body is not officially a human rights monitoring body as per the ACHR, ever since 2008 the General Assembly of the Organization of American States (OAS GA) which is the highest-ranking body of the OAS and is formed by the delegations of all the member states, has included issues concerning sexual orientation and gender identity in its annual resolution calling for the promotion and protection of human rights.⁹⁰

In 2012, following the creation of the LGBTI thematic unit at the IACHR, the OAS GA for the first time ever included in its annual resolution entitled 'human rights, sexual orientation, and gender identity' references to intersex

⁸⁷ IACHR and OAS. At para 195.

⁸⁸ OAS, 'On International Intersex Awareness Day, the IACHR Calls on States to Protect the Right to Health of Intersex Persons'; IACHR, 'En El Día de La Visibilidad Intersex, La CIDH Saluda Los Esfuerzos de La Asamblea General de La OEA Para Erradicar La Discriminación y Violencia Contra Las Personas Intersex En La Región Interamericana'; IACHR, 'IACHR Calls for Making Visible and Combating Discrimination and Violence against Intersex Persons'; 'IACHR Urges States to End Violence and Harmful Practices against Intersex Persons – Press Release IAD 2017'; 'End Violence and Harmful Medical Practices on Intersex Children and Adults, UN and Regional Experts Urge. – Press Release IAD 2016'.

⁸⁹ IACHR, 'Public Hearing on Human Rights Situation of Intersex Persons'; IACHR, 'Public Hearing on Human Rights Situation of Intersex Persons in the Americas'.

⁹⁰ OAS, General Assembly, 'Human Rights, Sexual Orientation, and Gender Identity, AG/RES. 2435 (XXXVIII/O/08), Adopted at the Fourth Plenary Session, Held on June 3, 2008'; IACHR and OAS, 'Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas'.



people as part of the LGBTI umbrella group.⁹¹ In the resolution the OAS GA called on member states to: ‘eliminate, where they exist, barriers faced by lesbians, gays, and bisexual, transsexual, and intersex (LGBTI) persons in access to political participation and in other areas of public life, as well as to avoid interferences with their private life.’ While the earliest resolutions are quite ‘timid’ in the framing and approach that the OAS GA gave to LGBT issues, probably considering the very diverse governmental positions that are present in the American region concerning gender and sexuality issues, the progress that can be seen through the years not only in terms terminology and inclusion but also regarding the scope of the annual resolution is remarkable.

Progressively, in 2013, the OAS GA finally included a recommendation to all OAS member states pertaining intersex genital surgeries and urged members States to ‘afford appropriate protection to intersex people and to implement policies and procedures, as appropriate, to ensure medical practices that are consistent with applicable human rights standards.’⁹² In its 2019 resolution the OAS GA, for the first time, ever made references not only to intersex people and the harmful medical practices that affects them but also embraced ‘sex characteristics’ as a human rights-based term and as a ground for protection and calls member states to condemn violence and discrimination based on such ground.⁹³

Having examined the rights and protection available to intersex people at regional level, this eBrief now turns to a consideration of that which operates at national levels. This is not an exhaustive review. Rather what follows is a summary of the laws which exist at a national level within selected countries. We have not examined countries such as Spain, for example, where there are a variety of regional laws in operation but no specific laws at national level. We have kept our focus on those countries which as examined as part of the larger INIA project.⁹⁴ Consequently, countries such as Iceland, whose law we

⁹¹ OAS, General Assembly, ‘Human Rights, Sexual Orientation, and Gender Identity. AG/RES. 2721 (XLII-O/12), Adopted at the Second Plenary Session, Held on June 4, 2012.’

⁹² OAS, General Assembly, ‘Human Rights, Sexual Orientation, Gender Identity and Expression. AG/RES. 2807 (XLIII-O/13), Adopted at the Fourth Plenary Session, Held on June 6, 2013. Resolution 6.’

⁹³ ‘Promotion and Protection of Human Rights, AG/RES. 2941 (XLIX-O/19). Adopted at the Fourth Plenary Session, Held on June 28, 2019. Point Xvii. Resolution 1.’

⁹⁴ ‘INIA: Intersex New Interdisciplinary Approaches’.



mentioned briefly in a footnote above, are not given detailed consideration here. Nor have we considered laws which do not explicitly address intersex issues, although it may be possible to interpret some of these laws within countries such that they can encompass intersex concerns.

National Level

Malta

Malta became the first country to frame legislation that acknowledges and respects intersex people's right to self-determination, personal dignity, and bodily integrity. The legislation, known as the Gender Identity, Gender Expression and Sex Characteristics Act (GIGESC), was approved by the Maltese Parliament unanimously in April 2015. It grants official status to intersex people and consequently protects their rights. Section 4 of the Act confers every Maltese citizen the right to request changes in the recorded gender and/or name to reflect the gender identity they associate with.⁹⁵ In case the person concerned is a minor who wants to bring changes to their recorded gender and/or name, Section 7 states that the Court dealing with the matter should ensure that the child's best interests are the paramount consideration and the concerned child's views are given due weight according to their age and maturity. Moreover, the Act has established an accommodating and simple administrative procedure for amending one's recorded gender and/or name,⁹⁶ which makes it convenient for intersex individuals to bring changes to their official documents as per their self-determined gender identity.

The Act further incorporates the principle of anti-discrimination and equality for intersex people under Section 13. Regarding norms, regulations, and procedures, the provision has stated that they should not limit, restrict, or annul the concerned people's right to gender identity. All the norms, regulations, and procedures shall respect an individual's right to gender identity and shall be further interpreted and enforced in the same manner. The provision has given the responsibility to the public service to ensure that unlawful discrimination and harassment on the grounds of sexual orientation,

⁹⁵ Gender Identity, Gender Expression and Sex Characteristics Act, 2015.

⁹⁶ Gender Identity, Gender Expression and Sex Characteristics Act. Section 4, 4A and 5.



gender identity, gender expression, and sex characteristics are eliminated. Public service is also required to promote equality of opportunity for all.⁹⁷ Other than the GIGESC Act, the Equality for Men and Women Act, Chapter 456 of the Laws of Malta, made amendments in 2003 to include sexual orientation, gender identity, gender expression, and sex characteristics as protected grounds against discrimination.⁹⁸

Under Section 14, the GIGESC Act provides the right to bodily integrity and physical autonomy to intersex people. To guarantee this right Section 14 of the Act makes sex assignment treatments and/or surgical interventions by the medical practitioners or other professionals on the sex characteristics of a minor unlawful, when the minor does not have the capacity to provide informed consent. However, in a situation where the minor gives informed consent for such medical treatment/ surgery, the medical practitioner shall ensure that paramount consideration is given to the best interests of the child and their views are taken into account with regard to their age and maturity. The provision has also emphasised the point that even under exceptional circumstances if a minor has to undergo sex assignment treatment without their consent if such treatments are driven by social factors, it should be considered to be in violation of the Act.⁹⁹ The Act also provisions that every individual seeking psychological support relating to sex or gender shall receive expert and individually tailored psychological and medical support or peer counselling for as long as necessary.¹⁰⁰

Malta has also made remarkable policy development in the education system with regard to the protection of rights and promotion of equality for intersex people. The Maltese Ministry for Education and Employment came up with the 'Trans, Gender Variant and Intersex Students in Schools Policy' in June 2015, which aims at making schools inclusive, safe, and free from discrimination for trans, gender variant, and intersex students.¹⁰¹ The policy also aims to make the school environment and learning more diverse and inclusive, so as to build social awareness, acceptance, and respect for

⁹⁷ Gender Identity, Gender Expression and Sex Characteristics Act. Section 13.

⁹⁸ Equality for Men and Women Act. Section 2.

⁹⁹ Gender Identity, Gender Expression and Sex Characteristics Act, 2015. Section 14.

¹⁰⁰ Gender Identity, Gender Expression and Sex Characteristics Act. Section 15.

¹⁰¹ Ministry for Education and Employment, 'Trans, Gender Variant and Intersex Students in Schools Policy'. At p5.



everyone.¹⁰² The policy has observed that the students should be provided with the right to privacy and confidentiality, proper representation from different stakeholders, and support from the school and community to tackle the issues of stereotypes, cultural expectations, discrimination, and harassment. The Policy also pointed out the need for providing adequate facilities to the concerned people and counselling when the students are having difficulty with identity affirmation.¹⁰³

Portugal

The Portuguese government has taken various measures to protect the gender identity and self-determination of intersex people and to eliminate discrimination against them. Portugal introduced Lei n.º 7/2011, de 15 de Março, Cria o procedimento de mudança de sexo e de nome próprio no registo civil e procede à décima sétima alteração ao Código do Registo Civil, the Portuguese Gender Identity Law in 2011, which made it possible for people to change their sex and name in the civil registry.¹⁰⁴ Article 2 of the Law provided that if the concerned individual is of legal age and is not suffering from mental illness, they have the capacity to change their sex on the registry. However, the provision further stated that the concerned person shall be diagnosed with a gender identity disorder to amend their gender.¹⁰⁵ Henceforth, self-determination is not sufficient ground for altering the sex of an individual under the Law of 2010. This legal position was changed in 2018 when the Portuguese Government introduced a new law 'establishing the right to self-determination of gender identity and gender expression and to the protection of each person's sex characteristics' (2018 Law).¹⁰⁶ The new legislation came into being when the Left Bloc (Bloco de Esquerda)

¹⁰² Ministry for Education and Employment. At p6.

¹⁰³ Ministry for Education and Employment. At p12.

¹⁰⁴ Lei n.º 7/2011, de 15 de Março, Cria o procedimento de mudança de sexo e de nome próprio no registo civil e procede à décima sétima alteração ao Código do Registo Civil (Portuguese Gender Identity Law Law No. 7/2011 of 15th March). Article 1.

¹⁰⁵ Lei n.º 7/2011, de 15 de Março, Cria o procedimento de mudança de sexo e de nome próprio no registo civil e procede à décima sétima alteração ao Código do Registo Civil (Portuguese Gender Identity Law Law No. 7/2011 of 15th March). Article 2.

¹⁰⁶ Lei n.º 38/2018, de 07 de Agosto, Direito à autodeterminação da identidade de género e expressão de género e à protecção das características sexuais de cada pessoa (Law No. 38/2018, of 7th August, Right to Self-Determination of Gender Identity and Gender Expression and to the Protection of Each Person's Sex Characteristics).



introduced a bill that would allow the alteration of gender solely based on the self-determination of the person concerned in 2016.¹⁰⁷ This bill was followed by a similar bill introduced by the People-Animals-Nature party (Pessoas-Animais-Natureza) in November 2016,¹⁰⁸ and the Explanatory Memorandum of the Presidency of the Council of Ministers (Presidência do Conselho de Ministros) in May 2017.¹⁰⁹

The 2018 Law made Portugal the sixth European country, following Malta, Norway, Denmark, Ireland, and Belgium, which opted for the legal model based on self-determination for changing sex on legal documents.¹¹⁰ Article 3 of the 2018 Law establishes the right to self-determination of a person through the free development of their personality in accordance with their gender identity and gender expression. Consequently, the applicants for recognition would no longer be required to diagnose with gender identity disorder to have their gender recognised by the law.

Article 4 and Article 5 of the 2018 Law are explicitly for the protection of intersex people and their sex characteristics. Article 4 states that ‘all people have the right to maintain primary and secondary sex characteristics.’ Article 5 prohibits surgical, pharmacological, and other treatments and interventions on the bodies of intersex minors that result in changes to their bodies and sex characteristics unless such treatment and intervention are necessary to prevent health risks and until the gender identity of the intersex minor is manifested. The provision under Article 5 has made Portugal the second country worldwide to prohibit unnecessary medical interventions on the bodies of intersex children and minors without their consent.¹¹¹ Further, where people request it, Article 11.1. of the 2018 Law guarantees to all people access to National Health Service for any interventions which they choose to harmonise their physical bodies with their gender identity.

¹⁰⁷ Left Bloc (Bloco de Esquerda), Draft Law Acknowledges the Right to Self-Determination.

¹⁰⁸ People-Animals Nature Party (Pessoas-Animais-Natureza), Draft Bill Ensures the Right to Gender Self-Determination.

¹⁰⁹ Presidência do Conselho de Ministros, ‘Proposta de Lei n.º 75/XIII. Exposição de Motivos’ (Law Proposal No. 75/XIII. Explanatory Memorandum).

¹¹⁰ ILGA Europe, ‘Parabéns! Portugal Votes to Respect the Rights of Trans and Intersex People’.

¹¹¹ ILGA Europe, ‘Parabéns! Portugal Votes to Respect the Rights of Trans and Intersex People’.



Article 6 provides that along with the sex in the civil registry, the person can also bring changes to their first name upon request. The law has also guaranteed the right to self-determination to persons aged 16 to 18 years wherein they can request a change in their mentioned sex and first name in the civil registry through their legal representatives in Article 7.¹¹² Further, people aged between 16 to 18 are also required to submit a report expressing their free and informed consent and it shall be signed by any doctor registered with the Portuguese Medical Association or psychologist registered with the Portuguese Psychological Association asserting the minor's will with their 'capacity for decision and informed will, without references to diagnoses of gender identity.'¹¹³ Finally, Article 7.3 permits an intersex person to require the modification of the sex and name in the civil registry from the moment their gender identity is manifested.

Article 12 of the 2018 Law deals with education and teaching, which shall be guaranteed by the state, at all levels of education and study cycles. It shall take measures to promote the exercise of the right to self-determination among the people concerned. The provision has also pointed out various measures like the prevention of discrimination and training aimed at teachers and other professionals in the context of gender identity, gender expression, and the diversity of sex characteristics of children and young people.¹¹⁴ To implement the provision of paragraph 1 of Article 12, the Presidency of the Council of Ministers and Education, Offices of the Secretary of State for Citizenship and Equality, and of the Secretary of State for Education established various administrative measures under the Order Number 7247/2019 on the 16th of August 2019.¹¹⁵ Article 5 of the Order has observed

¹¹² Lei n.º 38/2018, de 07 de Agosto, Direito à autodeterminação da identidade de género e expressão de género e à proteção das características sexuais de cada pessoa (Law No. 38/2018, of 7th August, Right to Self-Determination of Gender Identity and Gender Expression and to the Protection of Each Person's Sex Characteristics). Article 7.

¹¹³ Lei n.º 38/2018, de 07 de Agosto, Direito à autodeterminação da identidade de género e expressão de género e à proteção das características sexuais de cada pessoa (Law No. 38/2018, of 7th August, Right to Self-Determination of Gender Identity and Gender Expression and to the Protection of Each Person's Sex Characteristics). Article 7.

¹¹⁴ Lei n.º 38/2018, de 07 de Agosto, Direito à autodeterminação da identidade de género e expressão de género e à proteção das características sexuais de cada pessoa (Law No. 38/2018, of 7th August, Right to Self-Determination of Gender Identity and Gender Expression and to the Protection of Each Person's Sex Characteristics). Article 12.

¹¹⁵ 'Despacho n.º 7247/2019, de 16 de Agosto (Dispatch n.º 7247/2019, of 16 August)'.



the rights of autonomy, privacy, and self-determination of children and young people.¹¹⁶

The Portuguese legislation on the right to self-determination also prohibits direct and indirect discrimination based on a person's gender identity, gender expression, and sex characteristics.¹¹⁷ Any action or omission which leads to discriminatory practice gives the injured person the right to compensation as non-contractual civil liability under the Portuguese Civil Code, for both property and non-property damages.¹¹⁸

Germany

In early 2007, the left-wing party Die Linke sent a demand (Kleine Anfrage) to the German Government asking about the legal situation of intersex people in Germany.¹¹⁹ 'The response [from the government] made no effort to listen and politically engage',¹²⁰ writes Angelika von Wahl as it claimed that early surgeries are in line with the child's best interest.¹²¹ However, on the 7th of December, the Cologne Regional Court ruled in favour of Christiane Voelling, an intersex person who claimed for damages and interest for pain and suffering due to the inflicted injury in the sense of § 224 para. 1 No. 2 STGB (dangerous bodily injury) and § 226 para. 1 No. 1, No. 2 STGB (serious bodily injury).¹²²

¹¹⁶ 'Despacho n.º 7247/2019, de 16 de Agosto (Dispatch n.º 7247/2019, of 16 August)'. Article 5.

¹¹⁷ Lei n.º 38/2018, de 07 de Agosto, Direito à autodeterminação da identidade de género e expressão de género e à proteção das características sexuais de cada pessoa (Law No. 38/2018, of 7th August, Right to Self-Determination of Gender Identity and Gender Expression and to the Protection of Each Person's Sex Characteristics). Article 2.

¹¹⁸ Lei n.º 38/2018, de 07 de Agosto, Direito à autodeterminação da identidade de género e expressão de género e à proteção das características sexuais de cada pessoa (Law No. 38/2018, of 7th August, Right to Self-Determination of Gender Identity and Gender Expression and to the Protection of Each Person's Sex Characteristics). Article 14.

¹¹⁹ 'Kleine Anfrage: Rechtliche Situation Intersexueller in Deutschland Drucksache 16/4147 (Small Request: The Legal Situation of Intersex People in Germany)'.

¹²⁰ von Wahl, 'From Private Wrongs to Public Rights'.

¹²¹ 'Antwort der Bundesregierung zur Situation Intersexueller Menschen in der Bundesrepublik Deutschland (Answer to Parliamentary Question on the Situation of Intersex People in the Federal Republic of Germany)'.

¹²² Völling v. Lent, File no 25 O 179/07.



In 2008, the intersex group Intergeschlechtliche Menschen e.V. (at the time Intersexuelle Menschen e.V.; short IMEV) joined the Deutsche Frauenrat,¹²³ and sent in their first shadow report to CEDAW.¹²⁴ Since then, the different treaty bodies reprimanded Germany; namely: CEDAW, CRC, CAT and CRPD. As a result of national and international pressure, the German Ethics Board (Ethikrat) started a dialogue with different stakeholders resulting in a 200 page long position paper.¹²⁵ This paper includes an analysis of clinical approaches, the social and legal situation of intersex people and recommendations related to medical treatment and provisions. Regarding the civil status registry, the Ethics Board proposes that in the case of people whose sex cannot be clearly determined, 'anderes' ('other') should be available as an option in addition to the entry 'female' or 'male'.¹²⁶ Furthermore, the Ethics Board recommends that it should be regulated that no entry has to be made until the person concerned has made their own decision, with a maximum age to be established.¹²⁷

Previous law on civil status,¹²⁸ was modified by the introduction of the Gesetz zur Änderung Personenstandsrechtlicher Vorschriften (Personenstandsrechts-Änderungsgesetz - PStÄndG) (Law Amending Civil Status Regulations) in 2013. This 2013 law established that, if the child can be assigned neither to the female or the male sex, the civil status must be left empty (Article 1.6.).¹²⁹ OII Europe criticised a draft version of the law highlighting: 'Leaving sex entry open is not an option'. According to their review of the draft, 'it is not a choice but a requirement'. They also question that the proposed text does not clarify who will decide that the child cannot be assigned a male or female sex.¹³⁰

¹²³ Wahl, 'Lessons on Opportunity Hoarding and Gender Binarism'.

¹²⁴ Veith, Hassel-Reusing, and Kreuzer, 'Shadow Report To the 6th National Report of the Federal Republic of Germany On the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)'.

¹²⁵ Deutscher Ethikrat, 'Intersexualität Stellungnahme'.

¹²⁶ Deutscher Ethikrat, 'Intersexualität Stellungnahme'. At p177.

¹²⁷ Deutscher Ethikrat, 'Intersexualität Stellungnahme'. At p177.

¹²⁸ Personenstandsgesetz (PStG) (Law on Civil Status).

¹²⁹ Gesetz zur Änderung Personenstandsrechtlicher Vorschriften (Personenstandsrechts-Änderungsgesetz - PStÄndG) (Law Amending Civil Status Regulations).

¹³⁰ OII Europe, 'Sham Package for Intersex: Leaving Sex Entry Open Is Not an Option'.



A subsequent law passed in 2018 builds on this to note that in cases where it is not possible to assign male or female sex, the civil status entry can be left empty or be registered ‘divers’.¹³¹ In response to the 2018 law, OII Europe welcomed the clarification that choosing to register their child as ‘divers’ was optional and not mandatory.¹³² Nonetheless, they criticised the law for its failure to properly engage with human rights principles and enshrine a self-determination as a core value.¹³³ To change gender marker, a medical certificate must be submitted. The certificate does not have to be current; certificates from the time of birth or from later examinations are also sufficient. However, as OII Europe highlighted, many intersex people do not have access to their medical records. Thus the requirement to produce a medical certificate raises the risk of re-traumatisation as they reach out to medical practitioners for the required documentation.¹³⁴ Finally, OII Europe argued, that framed in a way which restricts 3rd gender markers to intersex people where many intersex people do not wish to be identified outside the male/female paradigm conflates intersex and non-binary issues.¹³⁵

Interestingly, the Federal Ministry of the Interior and Homeland, writes:

The law strikes a balance between the interests of the persons concerned in access to a change of gender entry and first name that is as low-threshold as possible and the public interest in keeping the gender entry in the civil status register valid.¹³⁶

In 2021, Germany adopted a new law to protect children with a variation of sex development from surgical interventions.¹³⁷ Since the introduction of the 2021 law, only operations that cannot be postponed are permissible. The German law is among the few in Europe to address this issue. While

¹³¹ Gesetz zur Änderung der in das Geburtenregister einzutragenden Angaben (Law Amending the Information to be Entered in the Birth Register). Article 1.

¹³² ‘Really Germany? Germany Misses the Chance for Basing Its 3rd Gender Marker Law on Human Rights.’

¹³³ ‘Really Germany? Germany Misses the Chance for Basing Its 3rd Gender Marker Law on Human Rights.’

¹³⁴ ‘Really Germany? Germany Misses the Chance for Basing Its 3rd Gender Marker Law on Human Rights.’

¹³⁵ ‘Really Germany? Germany Misses the Chance for Basing Its 3rd Gender Marker Law on Human Rights.’

¹³⁶ Bundesministerium des Innern und für Heimat, ‘Zusätzliche Geschlechtsbezeichnung “Divers” Für Intersexuelle Eingeführt’. Own translation.

¹³⁷ Gesetz zum Schutz von Kindern mit Varianten der Geschlechtsentwicklung (Law on the Protection of Children with Variations of Sex Development).



acknowledging ‘this first step towards protecting intersex children from non-vital medical interventions,’ OII Europe criticise a ‘lack of universality,’ highlighting, among other aspects, that ‘the law only protects children with a so-called “difference of sex development”.’¹³⁸ Furthermore, OII Europe observes a ‘lack of a clear definition of “urgency”,’ ‘lack of full protection against possible conflict of interest,’ ‘lack of guarantee of comprehensive information,’ ‘lack of monitoring mechanism,’ ‘lack of low-threshold access to justice for future intersex adults in case the law is breached’ and ‘lack of regulation of foreign evasion,’ observing that ‘prohibited interventions on intersex children, who live in Germany, may still be performed in another country without any repercussion.’¹³⁹

Colombia

Since 1991 the National Constitution of Colombia created a Constitutional Court with the purpose of safeguarding the national values and guaranteeing the rule of law.¹⁴⁰ This entity has become a core element of democracy and ‘somehow holds sovereignty in Colombia’ through a ‘judicial activism.’¹⁴¹ Although the nation does not have a law that regulates intersex people’s rights, through this Court, the country has been able to establish parameters to protect the intersex people’s interests.¹⁴² From the 1990’s Colombia became one of the earliest countries in the world to rule the right to autonomy and bodily integrity of the person when their sex characteristics differs from the traditional understanding of a male or female body.¹⁴³ Further, particular judgments were made for intersex people. In 1995, the Colombian Constitutional Court made a statement on the legitimacy of authorities and individuals to readjust the sex of a legal minor.¹⁴⁴ After a deep

¹³⁸ OII Europe, ‘A Good First Step’.

¹³⁹ OII Europe, ‘A Good First Step’.

¹⁴⁰ Colombian Constitutional Court 1991.

¹⁴¹ Tamayo Jaramillo, ‘The Colombian Constitutional Court, A Sovereign Without Control’.

¹⁴² Colombian Constitutional Court N. T-594 of 1993; Colombian Constitutional Court N. T-539 of 1994; Colombian Constitutional Court N. T-097 of 1994; Colombian Constitutional Court N. SU-623 of 2001; Colombian Constitutional Court N. C-577 of 2011; Colombian Constitutional Court N. SU-617 of 2014.

¹⁴³ Colombian Constitutional Court N. T-594 of 1993; Colombian Constitutional Court N. T-539 of 1994; Colombian Constitutional Court N. T-097 of 1994; Colombian Constitutional Court N. SU-623 of 2001; Colombian Constitutional Court N. C-577 of 2011; Colombian Constitutional Court N. SU-617 of 2014.

¹⁴⁴ Colombian Constitutional Court, N. T-477 of 1995. At p31-32.



analysis, the Constitutional Court concluded that although all minors are incapable and, therefore, decision-making about themselves depends on their legal representatives or parents, this is not enough for the case of irreversible medical interventions that are carried out on children, since those are so invasive and make it necessary for the patient to give their consent. In this case, the minor should make that decision. Thus, a balance is made between the principle of autonomy, where the patient must consent to the treatment, and the principle of protection of the minor's interest on behalf of their parents and the state.¹⁴⁵

From this case, the development of three parameters are taken as a point of reference to decide this and similar cases: first, the urgency of the treatment; second, the risk and impact that it can create on the current and future autonomy of the minor; and third, the age of the minor. The purpose of this is to examine the consequence of these types of interventions in the minor's life, and if the treatment is invasive and irreversible, the minor must wait until they are old enough to decide for themselves.¹⁴⁶

At the end of this case, the Court decided that honest and personal truth must be respected, and, based on the preceding cases, it decided to grant protection to the fundamental rights to identity, dignity, and free development of personality. Later, in 1999 the Constitutional Court of Colombia made a judgment where the legal problem to be solved was whether the holders or parents, entitled to rights over a minor, could authorise a medical and surgical intervention for readjusting the genitals of an intersex infant.¹⁴⁷

After many considerations, the Colombian Constitutional Court expressed that the intersex minor must decide the gender with which they identify, and hence the ruling indicates that the age of five years is the minimum threshold for a person to be able to consent in an informed way to the invasive treatments that may take place. Within the jurisprudential analysis, the Court took different studies of psychologists to estimate that 'by the age of five, a minor has not only developed a defined gender identity, but is also

¹⁴⁵ Colombian Constitutional Court, N. T-477 of 1995. At p31-32.

¹⁴⁶ Colombian Constitutional Court, N. T-477 of 1995. At p45.

¹⁴⁷ Colombian Constitutional Court N. SU-337 of 1999. At p36.



aware of what is happening to their body and has sufficient autonomy to manifest different gender roles and express their wishes.¹⁴⁸

Furthermore, it established that parental consent is legitimate in children under this age only if informed consent is sufficiently capable of efficiently supporting the decision.¹⁴⁹ Therefore, the Court did not agree to the claims of the mother, 'since it is up to the minor to make the decision on her sexual identity,¹⁵⁰ promoting the total freedom of the minor to decide the appropriate time to intervene and choose the sex that identifies them, and with the psychological and social support of the different state entities to help the family to understand the situation they are going through.¹⁵¹

In the following years, the Constitutional Court of Colombia developed other topics regarding intersex people and experiences, such as: (i) ordering medical authorities to create a proper environment for the parents, where they can learn how to manage the situations around intersex children and take their time for any decisions around surgery interventions, all of this to for the benefit of the child,¹⁵² (ii) the need for protection of the rights of the intersex minor during the performance of examinations, the supply of medications and interdisciplinary support,¹⁵³ (iii) the supremacy of fundamental rights that must always be ensured for intersex children against any other lower-ranking rights such as the ones related with social security payments,¹⁵⁴ (iv) the indisputable prohibition that a simple formality can prevent intersex minors from enjoying their right to have a legal personality and the guarantees that must be granted during the civil registry or further change,¹⁵⁵ and (v) the obligation of the medical facilities to establish a professional interdisciplinary team that provides psychotherapeutic support, not only medical professionals but also a psychotherapist and a social worker

¹⁴⁸ Colombian Constitutional Court N. SU-337 of 1999. Own translation, page 99. 'a los cinco años un menor no sólo ha desarrollado una identidad de género definida sino que, además, tiene conciencia de lo que sucede con su cuerpo y posee una autonomía suficiente para manifestar distintos papeles de género y expresar sus deseos.'

¹⁴⁹ Colombian Constitutional Court N. SU-337 of 1999.

¹⁵⁰ Colombian Constitutional Court N. SU-337 of 1999. Own translation page. 101 'por cuanto corresponde a la menor tomar la decisión sobre su identidad sexual.'

¹⁵¹ Colombian Constitutional Court N. SU-337 of 1999.

¹⁵² Colombian Constitutional Court N. T-551 of 1999. At p13-19.

¹⁵³ Colombian Constitutional Court N. T-1025 of 2002. At p61-62.

¹⁵⁴ Colombian Constitutional Court N. T-1021 of 2003. At p37-38.

¹⁵⁵ Colombian Constitutional Court N. T-450A of 2013. At p42-44.



who must accompany the intersex children and their parents throughout the decision processes.¹⁵⁶

After this jurisprudential analysis, it was possible to observe that the Constitutional Court of Colombia ‘introduced a “duty” for Colombian authorities to register intersex infants as they are entitled to the right to legal personality and their “indetermination” of sex cannot be considered as a valid justification to violate their fundamental rights.’¹⁵⁷

Argentina

Argentina was the first country in the world to introduce a legislation based scheme to enable a change in legal gender recognition based on self-declaration in 2012.¹⁵⁸ This move on the domestic legal front came after Argentina had taken an active role on the international stage promoting human rights for LGBTI people.¹⁵⁹ In adopting a self-declaration module of gender recognition, Argentina was the first country to separate access to and exercise of human rights from medical treatment pathways. In other words, no applicant required either proof of complete surgical transition of gender, nor administration of hormone therapy, nor a medical/psychiatric diagnosis in order to be able to amend the gender as which they were legally recognised.¹⁶⁰ The law goes further in embedding a human rights approach. In Article 5 it clarifies that where the applicant is under the age of 18 years of age, an application must be made through their legal representative but with the explicit consent of the child taking into account the evolving capacities and best interests of the child in accordance with the UN Convention on the Rights of the Child. It also clearly outlines in Articles 6-11 how the registration process should operate in order to be human rights compliant. Finally, in Article 12 it states that all citizens have the right to dignified treatment, which includes being able without discrimination to express themselves according to their preferred gender identity and to have only their recognised

¹⁵⁶ Colombian Constitutional Court N. T-622 of 2014. At p49-50.

¹⁵⁷ Pikramenou, *Intersex Rights: Living Between the Sexes*.

¹⁵⁸ Ley 26.743 Identidad de Género (Law 26.742 Gender Identity).

¹⁵⁹ Argentina, ‘Letter Dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations Addressed to the President of the General Assembly UN Doc: A/63/635’, 2008.

¹⁶⁰ Ley 26.743 Identidad de Género (Law 26.742 Gender Identity). Article 4.



name used in public after legal recognition of preferred gender has been achieved.

The Argentinian Gender Identity law was considered revolutionary when it was first enacted. Across the globe, human rights activists lauded it for adopting a human rights framework and enshrining a depathologised approach to the rights contained in the law based on self-declaration. As Mauro Cabral from *Global Action for Trans* Equality* (GATE) noted at the time of its introduction: 'This legal change in Argentina is also a message going beyond borders. It is a message for countries in the region to advance their commitments on gender identity and human rights issues.'¹⁶¹ Such proved to be the case, and schemes modelled on the Argentinian law have been introduced in other jurisdictions as draft laws to prompt government sponsored, rights respecting laws on this issue.¹⁶²

Welcome though it is, the 2012 Gender Identity Law does not explicitly address the core concern of intersex people, namely the question of non-consensual medical and/or surgical interventions on the bodies of intersex people. Therefore, in 2020, intersex activists proposed a draft law which would specifically guarantee the protection of the human rights of people based on their sex characteristics.¹⁶³ This language of this proposed Bill specifically protects the rights to bodily integrity and bodily and sexual diversity, it would guarantee the prohibition of any medical and/or surgical intervention or procedure without the full, free and informed consent of the person who would undergo it. The Bill goes further and draws on rights outlined in the Yogyakarta Principles and the Yogyakarta Principles Plus 10 by identifying the right to truth about one's sex characteristics and any bodily modification procedure that may have change them,¹⁶⁴ the right to determine the sex in the medical certificate, the right to gender recognition and consequent right to amend and modify the civil register and the right to protection against discriminatory acts. Furthermore, the Bill moves beyond protection of civil and political human rights and towards active protection of

¹⁶¹ OUT-Right., 'Argentina Adopts Landmark Legislation in Recognition of Gender Identity'.

¹⁶² One such example is Ó Snodaigh's Private Members Gender Recognition Bill introduced before the Irish Parliament in 2013. Aonghus Ó Snodaigh, TD, Gender Recognition Bill.

¹⁶³ Proyecto de Ley sobre Protección Integral de las Características Sexuales, S-2090/19, Nov 2020.

¹⁶⁴ Proyecto de Ley sobre Protección Integral de las Características Sexuales, S-2090/19, Nov 2020. Article 9.



economic, social and cultural rights by proposing to enshrine proper social security assistance. Finally, this new proposed legislation would establish a truth commission to engage with the right to redress and to clarify the events within Argentina which relate to the modification of the bodies of those with variations in their sex characteristics.¹⁶⁵

Conclusion

Human rights is a powerful tool for activist and advocates for intersex rights to employ as they enable a framing of intersex concerns in a manner which establishes their legitimacy and empowers governments, international actors and NGOs to engage with them. The analysis in this eBrief reveals that there has been a significant increase in the visibility of intersex issues at the international and regional levels over the past decade. Nonetheless, at the national level, the impact of human rights has been more limited. Yet where governments have been receptive to the voices of intersex people, there has been some very meaningful steps towards true vindication of the human rights of intersex people.

¹⁶⁵ Proyecto de Ley sobre Protección Integral de las Características Sexuales, S-2090/19, Nov 2020.

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