

Being Intersex in Zambia: A Legal and Policy Review



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Being Intersex in Zambia: A Legal and Policy Review



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UNDP Foreword

As we approach the deadline for achieving the 2030 Agenda for Sustainable Development and the Sustainable Development Goals, it is imperative that we prioritize the needs of the most vulnerable and marginalized communities. The 2030 Agenda rightly emphasizes the importance of “leaving no one behind” and addressing the structural barriers that perpetuate inequality and discrimination based on race, ethnicity, religion, age, disability, and gender identity. Citizens that form part of the marginalized communities in society are often affected by multiple and intersecting forms of discrimination with long-lasting generational impact. Communities left behind also experience exclusion in policies, laws and practices, human rights violations and access to economic and social justice, which deepens inequality and results in negative outcomes.

Globally, it is estimated that intersex people account for 1.7 percent of the population. Data on intersex persons related to HIV and sexual and reproductive health and rights, and their overall well-being, is limited, and inclusion of their specific needs in policies, laws and practices continues to be a challenge.

This report, entitled *Being Intersex in Zambia: A Legal and Policy Review*, is the product of a highly consultative and rigorous review and provides a comprehensive overview of the policy and legal issues affecting the intersex community in Zambia. The report offers short- and medium-term recommendations and strategies to strengthen protections for the intersex community. It highlights the lack of protections for intersex infants against forced or coercive surgeries, the complex process of legal gender recognition, and the challenges of accessing health and education services.

The African Union’s recent adoption of Resolution 552 on “Promotion and Protection of the Rights of Intersex Persons in Africa - ACHPR/Res.552 (LXXIV) 2023” is a significant milestone for the continent. It is anticipated that Member States will take the necessary steps towards the domestication of this resolution in policies and laws. We commend the Government of Zambia for adopting the recommendation from the Committee on the Rights of the Child that seeks to protect infant children from unnecessary medical or surgical treatment without informed consent.

The report is a critical first step towards understanding the diverse issues, needs and challenges affecting intersex persons in Zambia. It is also a critical milestone to highlight strategies for systematically transforming laws, policies, and practices to be more inclusive. The report recommends for the review of the Gender Equity and Equality Act, the Employment Act, the Persons with Disabilities Act, Births and Deaths Registration Act, Education Act, Employments Act and the Public Health Act to promote inclusion and positive outcomes for intersex persons in Zambia. Additionally, the report recommends the establishment of an inclusive multidisciplinary intersex health and human rights taskforce to provide the necessary oversight, strategic direction, guidance, and monitoring of the regional and international commitments.

The recommendations align closely with the Strategic Development Area 4 of Zambia’s 8th National Development Plan, which seeks to improve the rule of law, human rights, and constitutionalism for all Zambians, and calls for a more holistic and multisectoral approach to addressing the existing and emerging issues affecting intersex persons.

Finally, we would like to commend the Intersex Society of Zambia, Zambia Medical Association, Human Rights Commission, the National AIDS Council and other key stakeholders for their contributions to this report, as well as their unwavering commitment to advocating for the rights and recognition of intersex persons in Zambia. We hope that this report will serve as a catalyst for action towards a more inclusive and just society that leaves no one behind.

Lionel Laurens
UNDP Resident Representative in Zambia

Intersex Society of Zambia Foreword

This report comes at a critical juncture, when the continent appears to be increasingly becoming conscious of the challenges faced by intersex individuals. The Intersex Society of Zambia commends the African Commission on Human and Peoples' Rights in Africa (ACHPR) for its guidance and direction in protecting and promoting the rights of intersex individuals in Africa. The adoption of Resolution 552 during the ACHPR's 74th ordinary session, which emphasizes the promotion and safeguarding of intersex people's rights in Africa, is being widely hailed throughout the continent.

The Intersex Society of Zambia also welcomes the accepted recommendation from the Committee on the Rights of the Child (CRC) by the Government of Zambia that seeks to ensure *“that intersex children are not subjected to unnecessary medical or surgical treatment, without their consent, in line with the rights of the child to bodily integrity, autonomy and self-determination – and that the victims have access to justice, reparation and indemnity”*. The Ministry of Health and other government agencies are also recognized for the minimal efforts made in ensuring that intersex persons have access to health care.

Although we acknowledge the progress made, there is still much work to be done to fully ensure our rights. In Zambia, those who are intersex are subjected to marginalization, societal judgment and mistreatment, as well as violations of their human rights across all aspects of life. For many, receiving legal recognition for their sex or gender remains a major obstacle.

We continue to call for the government to take concrete measures to uphold the rights of intersex persons and provide protection from abuse. This entails putting in place appropriate inclusive legal and policy frameworks aimed at protecting intersex persons from discrimination on the grounds of sex characteristics, including in access to health care, education, employment, sports and in obtaining official identity documents. The government needs to lead in raising awareness of the rights of intersex people; combating the root causes of these violations, such as harmful stereotypes, stigma and pathologizing of intersex persons; providing training to health professionals and public officials, including legislators, the judiciary and policymakers; and ensuring that adult intersex persons decide whether they wish to modify the appearance of their own bodies, and children are allowed to make an informed decision for themselves at the appropriate age. Access to medical services that respond to their specific health needs based on non-discrimination, informed consent, and respect for their fundamental rights, is a must.

We are making an urgent appeal to the Government of Zambia to prohibit all unnecessary cosmetic medical surgeries and hormonal procedures on intersex children unless there is a major threat to the life of the intersex minor as evidenced with other intersex variations. It is imperative that we uphold the autonomy of intersex adults and children and their right to health, to physical and mental integrity, to live free from violence and harmful practices, and to be free from torture and ill-treatment. Intersex children and their parents should be provided with support and counselling, including by peers.

It is our sincere hope that the Government of Zambia will follow the example of the Government of Kenya, which is considered a benchmark in incorporating intersex individuals into the country's national statistics census and civic registration systems as full-fledged citizens, particularly in the Registration of Births and Deaths. This includes the adoption and domestication of Resolution 552 and the commitment to implement crucial recommendations outlined in this report.

Leaving no one behind – the central principle of the 2030 Agenda for Sustainable Development – means ensuring that processes and systems are inclusive of all persons in Zambia.

Mphatso Sakala
Founder/Executive Director
Intersex Society of Zambia

Abbreviations and acronyms

CSE	Comprehensive sexuality education
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTI	Lesbian, gay, bisexual, transgender and intersex
SADC	Southern African Development Community
SRH	Sexual and reproductive health
SRHR	Sexual and reproductive health and rights
UDHR	Universal Declaration of Human Rights
UNFPA	United Nations Population Fund
WHO	World Health Organization
YP+10	Yogyakarta Principles Plus 10

Just Like You

A poem by Yellow Juice

1 out of 2,000 people are born intersex. In this case I am that one, I am a statistic.

That is what they have made me believe, that is what they have put in my head.

They say I have a mistaken identity because I do not conform to the binary ideas of male and female, that is what they have put in my head.

They have filled my head with doubts and insecurities, taught me to hate what I am because it is outlandish.

But do you think I chose this, huh?

Instead, teach me to love me, protect and educate me.

I have the right to life. I have the right to socialization, because I am human too, and I am valid.

All these myths and misconceptions that are untrue, just like you, I have a future and dreams to pursue.

I am intersex, I am human just like you.

Executive summary

Intersex persons are legally ‘invisible’ in Zambia, and there is limited and insufficient research and data on the impact of laws and policies on their rights and well-being. This research found that intersex persons in Zambia face stigma, discrimination, exclusion and institutional violence, and they struggle to realize their rights, including sexual and reproductive health and rights (SRHR), and to participate in society on an equal basis.

In Zambia, the Constitution and various national laws provide for equality, non-discrimination and enjoyment of rights such as education, employment and health care without discrimination. While these rights apply equally to intersex persons, the legal protections appear to be inadequate to protect them from specific rights violations. For instance, while many laws and policies protect all people from discrimination on the basis of sex, they fail to specifically recognize and protect intersex persons as a vulnerable population or to take into account the sexual and reproductive rights and legal status of intersex persons who fall outside the binary model (of male and female), and they contain no explicit references to gender identity, gender expression or sex characteristics.

Rights violations include stigma, discrimination, violence and unfair treatment within various sectors of society, including health care, employment and education; forced and coerced medical treatment, including unnecessary gender ‘normalizing’ surgery on intersex infants without fully informed and autonomous consent; inadequate access to medical records and breaches of medical confidentiality; inadequate access to health information and services to meet their needs; and difficulties in accessing or changing identity documentation (national citizenship sex description and their passports) to reflect their sex or gender status, among other things. In addition, intersex persons struggle to access justice for rights violations.

The following broad recommendations are made for improving laws, policies and regulations to strengthen protection for intersex persons. Based on this, specific amendments may be developed, working with the Zambia Law Development Commission, relevant ministries, and in consultation with key stakeholders:

- i. Develop a comprehensive and coordinated legislative and policy framework for the recognition of intersex persons in laws and policies, and to protect the rights of intersex persons, including the rights to: equality and non-discrimination; to recognition as a person before the law (legal identity); to physical and mental integrity; to security of the person; autonomy and self-determination of intersex adults and children; to life; to health and to live free from violence and cruel, inhuman and degrading treatment or punishment; including the rights of children to be free from harmful practices or forced, coerced and unnecessary medical treatment during infancy or childhood. The legal framework should also protect their rights to equal access to justice for rights violations.
- ii. Specifically, ensure that relevant laws such as the Gender Equity and Equality Act, the Employment Act, the Persons with Disabilities Act and other relevant anti-discrimination laws and policies (e.g. in education) recognize intersex persons as a vulnerable population, include definitions of intersex persons; and specifically provide for non-discrimination of intersex persons; including for specific rights violations of intersex persons experienced in respective sectors (e.g., health care, employment).
- iii. Review the Births and Deaths Registration Act and other relevant laws and regulations and administrative procedures to support the right to legal identity of intersex persons in a way that protects their rights to autonomy and self-determination. Birth registration provisions, for instance, should enable intersex persons to register and have access to identity documents at birth without having to fall within the binaries of male and female. This may include, for instance, broadening the definition of sex, allowing a registration descriptor to be recorded as ‘undetermined’ until a child is able to make a decision, and/or ensuring that sex markers

accommodate the needs of intersex persons in other ways. Birth registration should also include allowances for persons to decide to amend such official documentation without undue difficulty, at a stage when they are able to make that decision.

- iv. In consultation with the Ministry of Education, review the Education Act and other relevant regulations, policies and guidelines, to recognize intersex learners as a vulnerable population, broaden the definition/understanding of sex to ensure protection from discrimination for intersex learners, include intersex issues within comprehensive sexuality education, increase awareness, training and education, take steps to reduce stigma, discrimination and harassment against intersex learners and provide remedies for harassment and abuse.
- v. Develop and review health laws and corresponding guidelines aligned with international, regional and domestic law and policy, in consultation with stakeholders such as the Zambia Medical Association and the Intersex Society of Zambia, to include specific protections of the right to health and sexual reproductive health rights of intersex persons, including recommending, among other things:
 - a. protection of the rights of intersex persons to non-discriminatory access to appropriate medical services, which should include rights-based, lifetime health-care protocols for intersex children;
 - b. protection of the right to access to health information and to medical confidentiality for intersex persons;
 - c. provision for a lowered age of consent for adolescent access to sexual and reproductive health-care services;
 - d. a prohibition on unnecessary medical interventions in non-life-threatening circumstances, in the absence of prior, free and fully informed autonomous consent provided by the intersex person at a sufficiently mature age to guarantee bodily integrity, autonomy and self-determination;
 - e. provision for adequate health information and supported decision-making mechanisms for intersex adults and adolescents, and their parents/legal guardians;
 - f. provision for training of health workers on intersex persons and their SRHR, including the range of sexual and related biological and physical diversity among intersex persons, health needs and available services;
 - g. provision for integrated psychosocial counselling support for intersex adults, adolescents and children, and their parents/guardians; and
 - h. strengthened safeguards, independent oversight and accountability mechanisms to prevent rights violations and provide accountability.
- vi. Address the root causes of human rights violations against intersex persons, which include inadequate and inaccurate information as well as harmful social and cultural gender norms and stereotypes, including beliefs about attributes required of men and women. This may include:
 - a. awareness-raising, training and sensitization for the general public and in specific sectors (e.g. education, employment) on the rights of all persons, including intersex persons, to equality and non-discrimination on the basis of sex, gender identity, gender expression and sex characteristics; and the impact of harmful gender norms;

- b. training for health-care professionals on the rights of intersex persons, on communicating with and treating intersex persons in health-care settings, observing their right to life, to dignity, and to medical treatment only with free and fully informed autonomous consent; and
 - c. training for educators on the rights of intersex children and the importance of inclusive education for intersex children to prevent exclusion from education and bullying within schools on the basis of intersex status.
- vii. Strengthen access to justice, including training intersex persons on their rights, and sensitizing paralegal and legal support service providers, national human rights commission staff, judicial officers and law enforcers, to improve access to justice for intersex persons whose rights are violated.
- viii. Work with the intersex community and other stakeholders (cooperating partners, civil society organizations, community-based organizations, churches and all concerned) to strengthen health-care services to ensure that:
 - a. existing health services, including sexual and reproductive health care, information and services, are available and accessible to intersex persons; and
 - b. the health sector designs, develops and fully resources health strategies, plans and programmes to provide strengthened and specific health services to intersex persons.
- ix. Work with the intersex community and stakeholders, including cooperating partners, to support the development of organizations representing intersex persons, and to develop mechanisms to ensure their full, inclusive, strategic and active participation in the design, development, implementation and monitoring and evaluation of all laws, policies and programmes that affect the lives of intersex persons in Zambia.
- x. Establish a multidisciplinary intersex health and human rights taskforce to further analyse laws, policies and institutional and administrative reforms regarding intersex persons; review relevant literature based on a comparative approach to care, treatment and protection of intersex persons; compile comprehensive data regarding the number, distribution and challenges of intersex people, including the nature and extent of rights violations they experience; identify research priorities; and make recommendations for strengthening an enabling framework to safeguard the interests of intersex persons in Zambia.

Chapter 1

Introduction

In Zambia, as in many other countries across the world, intersex persons experience stigma, discrimination, forced medical procedures without adequate and informed consent, as well as a more generalized ‘invisibility’ in law, regulations and policy, which impacts their access to services and rights to health, welfare and development.

In 2021, the United Nations Development Programme (UNDP), in partnership with the Zambia Medical Association and the Intersex Society of Zambia, commissioned this legal and policy assessment, which seeks to review existing legislation, policies and guidelines, as well as the gaps, inconsistencies or disharmony in the regulatory space governing the rights of intersex persons, and how they impact their rights and development.

1.1

What does intersex mean?

Intersex people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies. Intersex is an umbrella term used to describe a wide range of natural bodily variations. In some cases, intersex traits are visible at birth, while in others, they are not apparent until puberty. Some chromosomal intersex variations may not be physically apparent at all. According to experts, between 0.05 percent and 1.7 percent of the population are born with intersex traits—the upper estimate is similar to the number of red-haired people. Being intersex relates to biological sex characteristics, and is distinct from a person’s sexual orientation or gender identity. An intersex person may be straight, gay, lesbian, bisexual or asexual, and may identify as female, male, both or neither. Because their bodies are seen as different, intersex children and adults are often stigmatized and subjected to multiple human rights violations, including violations of their rights to health and physical integrity, to be free from torture and ill-treatment, and to equality and non-discrimination.¹

1.2

Intersex in infants

Most intersex infants are born with variations that limit hormone production, affecting their growth and sexual development. Some intersex traits—such as atypical external genitalia—are apparent at birth. For instance, in some cases, ‘biologically’ female neonates may be born with atypical, masculinized genitalia. Other characteristics—such as chromosomes that do not match the assigned sex—may only become apparent at puberty. Between the late 1950s and early 1970s, surgery for intersex infants was considered an urgent matter to be completed as soon as possible after the child was born, to alter the child’s appearance to something considered in keeping with binary norms of male or female. The reasoning was that the child’s sex was an important factor determining the type of parental response to the child, which in turn was considered to influence the child’s gender development.² Currently, experts argue that early infant intersex surgery is not urgent, ‘life-saving’ surgery, but that hormonal replacement therapy given to intersex children with adrenal insufficiency may be essential. For this reason, each person is best reviewed on a case-by-case basis by a multidisciplinary team.^{3,4}

1 Office of the High Commissioner for Human Rights, ‘Fact Sheet: Intersex’, OHCHR, Geneva, 2017, <https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Intersex.pdf>.

2 Money, J.A. and Ehrhardt, A.A., *Man and Woman, Boy and Girl*, Johns Hopkins University Press, Baltimore, 1972, p. 12.

3 Hughes, I.A., Houk, C., Ahmed, S.F. and Lee, P.A., ‘Consensus statement of Intersex Disorders’, *Archive of Diseases of Childhood*, BMJ Journals, July 2006, pp. 554–563.

4 Sturm, R., Durbin-Johnson, B. and Kurzrock, E.A., ‘Congenital Adrenal Hyperplasia: Current Surgical Management at Academic Medical Centers in the United States’, *The Journal of Urology*, Volume 193, Issue 5S, May 2015, pp. 1796–1801.

1.3

Intersex in adolescents and adults

Not all intersex individuals are diagnosed at birth.⁵ Many intersex persons may learn later in their adolescent or adult life that they are intersex. For instance, this may become apparent at the time of puberty, due to late-onset menstruation or virilization in a girl at puberty, or due to delayed puberty in a boy.⁶

1.4

Human rights issues facing intersex people

One of the clearest human rights violations facing intersex people relates to early intersex surgery on infants. However, the ‘medicalization’ of intersex people has exacerbated their social and legal invisibility and the human rights issues they face in society and in the legal system. International studies cite a range of broader human rights issues that affect and impact intersex people throughout their lives, beyond infant surgery, including, for instance, infanticide, various forms of forced and coercive medical interventions, discrimination in birth registration, education, sport, employment and other services, and a lack of access to justice and redress.⁷

Surgery on intersex infants is carried out without the informed consent of the infant child, since they are not capable, at that age, of providing such consent, but rather with the consent of a parent or guardian. This is considered problematic in itself, and given the various uncertainties around intersex surgery, discussed below, it could be argued to contravene ethical, legal and human rights norms and standards, including rights to privacy, security of the person, self-determination, freedom from cruel, inhuman and degrading treatment or punishment, as well as the right to the highest attainable standard of health. This view conforms with the recommendations of the expert meeting convened by the United Nations Office of the High Commissioner for Human Rights in Geneva on ending human rights violations against intersex persons:⁸

- Infant surgery is often an imposition of legal, societal and parental values on the child. For instance, the appearance of the child’s genitalia may be of importance to the parents and family members of the child concerned, and they may wish to protect their child from future marginalization. The child is not in a position to express a view on the matter at that stage (although there is a new generation of intersex persons who express feeling content with their sexuality and who would not wish for surgery).

“My name is Yvonne, I was born in 1992. I was born in Chihota rural area in Zimbabwe. I have a diploma in teaching but currently I am unemployed. I only knew I am intersex last year when I turned 24 years old. Growing up, I was taken to different doctors who always abandoned surgery at last minute maybe because there was not enough studies on intersex. When I turned 15 years old, members from my church took me to a doctor who recommended surgery. One day they just came and took me from school to St Anne’s Hospital in Avondale Harare where the surgery was performed on me. They removed the male part and re-corrected the female part. This was not

5 Ahmed, S.F., Achermann, J.C., Arlt, W., Balen, A.H., Conway, G., Edwards, Z.L., Elford, S., Hughes, I.A., Izatt, L., Krone, N., Miles, H.L., O’Toole, S., Perry, L., Sanders, C., Simmonds, M., Wallace, A.M., Watt, A. and Willis, D., ‘UK Guidance on the initial evaluation of an infant or an adolescent with a suspected disorder of sex development’, *Clinical Endocrinology* 75 (2011), pp. 12–26.

6 Nordstrom, A. ‘Puberty in individuals with a disorder of sex development’, *Current Opinion in Endocrine and Metabolic Research*, Volume 14, October 2020, pp. 42–45.

7 See, for instance, Office of the High Commissioner for Human Rights, ‘Intersex People: OHCHR and the human rights of LGBTI people’, <https://www.ohchr.org/en/sexual-orientation-and-gender-identity/intersex-people>.

8 Office of the High Commissioner for Human Rights, ‘Background Note: Human Rights Violations Against Intersex People’, OHCHR, Geneva, October 2016, pp. 41–45, <https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsAgainstIntersexPeople.pdf>.

my decision, it was parents consenting on my behalf. All my parents wanted was for me to fit into society...”⁹

- Birth registration and certification requirements (discussed further below) provide narrow legal provisions that enforce marginalization and othering of intersex persons. This may make parents feel ‘forced’ to decide whether their child will be male or female. The interplay of legal, social and medical expectations creates a context in which the child’s rights to physical and mental integrity and to express views freely can be easily overridden. Health-care decisions are based on a ‘predict and control’ model (although predictions are uncertain at this age), with health professionals attempting to predict the future gender of the child and control the outcome of this prediction by means of surgery (as well as treatment with hormones, other normalizing treatments and psychological support) without the prior, free and fully informed autonomous consent of the child.
- There is no worldwide consensus on the benefits of intersex surgery. However, surgery can cause physical harm to a child (e.g. due to scarring). Surgery is also grounded in the belief that sex, gender and genital anatomy are aligned,¹⁰ and will continue to be aligned for the particular child; however, surgery may cause psychological harm for a child whose gender identity does not ‘fit’ within the binary sexual categorization of male or female chosen for the child, and where an intersex person is not provided the opportunity to have their own category of a ‘sexual identity’.¹¹ A child is therefore exposed to medical and physical harm, with what is now considered to be uncertain gain to the child’s physical or mental health and welfare, and with the possibility of future psychological harm.
- The medical approach to intersex persons in general, which often treats them as having disabilities or impairments, may lead to long-term impairments and a lifetime of medical care.¹² Many intersex persons who experience surgery are often subjected to complications and multiple medical corrections during their lifetimes, further impacting their health rights, as well as other rights such as to access education and employment.

“Twelve year old Sherry* had genital surgery to make her sex characteristics look female. Her penis was removed at age two. She says ‘I am always in and out of the hospital, and I am missing out on school.’”¹³

For a birth to be successfully registered, a child’s sex should be indicated on a birth certificate. Birth registration and certification legislation and regulations tends to consider binary categories, assigning all individuals as either male or female, reinforcing social expectations that a child fits into existing sex categories (and further influencing the perceived ‘medical need’ for treatment and intervention). As a result, it is not always possible to assign a sex to those intersex newborns who fall outside the binary model of male or female. The law generally fails to provide for situations where there is an ambiguity of sex or allow for a child’s sex to be ‘undetermined’ permanently or until a later stage; thus, failing to adequately reflect intersex persons and furthering impact on the fundamental rights of intersex people. The moment when birth certificates and registration take place is frequently the first time that intersex people are confronted with a legal issue. These issues persist when they may wish to change sex or gender markers on official documents at later stages.

9 Centre for Human Rights, Faculty of Law, University of Pretoria, ‘Study on the human rights situation of intersex persons in Africa’, Pretoria, 2022, p. 10.

10 Southern Africa Litigation Centre, ‘Understanding Terminology’, *Laws and Policies Affecting Transgender People in Southern Africa*, SALC, Johannesburg, 2017, <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Understanding-terminology.pdf>. Biological sex and gender are different. Gender identity is not inherently nor solely connected to one’s physical anatomy.

11 Kemp, S.F., ‘The role of genes and hormones in sexual differentiation’, in *Ethics and Intersex*, edited by Sytsma, S.E., Springer, Dordrecht, 2006, p. 2.

12 Office of the High Commissioner for Human Rights, ‘Background Note: Human Rights Violations Against Intersex People’, OHCHR, Geneva, October 2016, pp. 41–45, <https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf>.

13 ISSZ and NNID, ‘The rights of intersex children in Zambia: NGO submission for the 85th session of the Pre-Sessional Working Group of Committee on the Rights of the Child’, Lusaka, 2019.

“I had an encounter in a bank. My ID still recognises me as a female. I gave my ID to the teller. Instead of that teller to serve me, the teller raised an alarm to the security team, saying there is someone here trying to fraud or maybe impersonate. The police came. They did not give me a chance to explain. They started beating me up. When they were beating me up there was a lady who restrained them that is how they stopped. I tried to explain to them that I was intersex and they wanted proof for that. I had to be searched and that meant removing my clothes. It was dehumanising but I could not report that to anyone because even if I try to report they will still want me to prove that indeed I am intersex.”¹⁴

Reports of infanticide and mutilation of intersex children at birth have been documented by human rights organizations in East and Southern Africa, including Kenya, South Africa and Uganda.¹⁵

“My child was subjected to a genital ‘normalising’ surgery which left our child with leaky urine. They could not do further surgery on my child because they do not have the expertise to do further surgeries. We were referred to a hospital in Boston, United States. I cannot afford to take my child for surgery in the US. I have spent much of my savings over the past years trying to get help for my child. Some people have suggested to me and my wife to kill our child because they regard it as a curse to the family.”¹⁶

In addition to issues faced at birth, intersex persons face stigma, discrimination and prejudice throughout their lifetimes in communities, in schools, in the workplace and in the health sector, among others, and lack access to justice for rights violations. A 2016 study in East Africa based on studies with 120 intersex people, parents, medical practitioners and community leaders found that 90 percent of intersex youth interviewed reported having to drop out of school due to stigma and discrimination from students and staff during puberty.¹⁷ The Intersex Society of Zambia has received reports that intersex children avoid school because they are bullied, as they are believed to be a curse or a bad omen. Bullying has a negative impact on physical and mental health and personal development, and missing school can have long-term effects on the lives of these intersex children and impede future employment opportunities.¹⁸ Reports of murder, mutilation, harassment and stigmatization of adolescents and adults have been reported, including the murder of an adolescent in Kenya and the assault and potential rape of an adolescent in Nigeria.¹⁹ In addition, health issues such as medical complications and the need for ongoing treatment—often arising from unnecessary medical surgery—further impact the right to development of intersex persons, affecting their access to education, employment and their broader participation.

“Every time I tried to go to the toilet, the whole school would follow me wanting to see how I looked like. They wanted to see whether I squat or I stand. It was hard for me to remain in class so I started the habit of like running away from school, hiding out there. My mother would even take me to the police so that I get punished for refusing to go to school. I dropped out from school when I was very young.

I also remember one instance whereby an elderly man accused me very badly and saying like I’m a curse. I’m the reason why my area was facing a drought at that time and I was supposed to be stoned to death. They even beat me thoroughly. I ran away from that area. I started staying like a street child.”²⁰

14 Centre for Human Rights, Faculty of Law, University of Pretoria, ‘Study on the human rights situation of intersex persons in Africa’, Pretoria, 2022, p. 14.

15 Office of the High Commissioner for Human Rights, ‘Background Note: Human Rights Violations Against Intersex People’, OHCHR, Geneva, October 2016, p. 21, <https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf>.

16 Centre for Human Rights, Faculty of Law, University of Pretoria, ‘Study on the human rights situation of intersex persons in Africa’, Pretoria, 2022, p. 12.

17 Ibid., at p. 30.

18 ISSZ and NNID, ‘The rights of intersex children in Zambia: NGO submission for the 85th session of the Pre-Sessional Working Group of Committee on the Rights of the Child’, Lusaka, 2019.

19 Ibid., at p. 21.

20 Centre for Human Rights, Faculty of Law, University of Pretoria, ‘Study on the human rights situation of intersex persons in Africa’,

Examples of stigma and discrimination within health care include forced and coerced sterilization, poor-quality health care, institutional violence, lack of access to medical records, lack of training of medical professionals, lack of research on long-term health outcomes and needs, and a general lack of standards of care that are respectful of the rights of intersex people.²¹ This leads to difficulties in accessing health care and being treated with dignity, discouraging intersex people from accessing comprehensive services. Research by the Office of the High Commissioner for Human Rights (OHCHR) documented reports by intersex organizations of how repeated genital exams, photography and exposure—including for training purposes—were experienced as deeply humiliating and traumatic, akin to a form of sexual abuse.²² Recent research in Botswana, Ghana, Kenya, South Africa, Zimbabwe and Uganda highlights how discriminatory and stigmatizing attitudes in health care affects treatment, as well as people’s physical and mental well-being. Ronnie, from Zimbabwe, who was raised as a boy until the age of 16, was forced to undergo ‘normalizing’ surgery and provided with a “dildo-like stick” to prevent the artificial vaginal opening from closing. Ronnie says: “I now have trauma and fear of going to a hospital. I felt like a medical experiment because lots of people would come to see me, opening me up and taking notes. I guess they were medical students. I felt violated. I still have chronic pain up to now. Given a choice, I would never have gone through the surgery. I became homeless at some point, battled alcohol addiction, suicidal thoughts and depression.”²³

Stigma and discrimination are exacerbated by various factors, including negative societal attitudes arising from the lack of awareness and understanding of intersex people and the failings of the binary gender model of masculine and feminine identities, and the lack of legal recognition and protection for intersex persons.

1.5

Intersex people and human rights issues in Zambia

There is limited research on human rights violations facing intersex people in Zambia, and reports of rights violations are, for the most part, provided by intersex organizations and persons and reflect similar issues to those described at regional and international level. There has been a recent movement by the intersex community in Zambia to raise their visibility and voices, speak out about human rights issues and challenge the traditional ideas of sex and gender, to reconcile these concepts with ideas that are more inclusive of intersex persons.

In 2017, the Centre for Human Rights of the University of Pretoria Faculty of Law in South Africa, Iranti²⁴ and SIPD-Uganda²⁵ held consultations on intersex human rights issues, including a panel discussion: ‘Intersex human rights: Challenges and opportunities’ in Banjul, Gambia, convened on the sidelines of the 61st Ordinary Session of the African Commission on Human and Peoples’ Rights.

The panel noted that *“intersex persons in Africa continue to face human rights violations which include non-consensual medically unnecessary genital normalising surgeries and genital mutilation on minors; infanticide and baby abandoning; lack of appropriate legal recognition and administrative processes allowing intersex persons to acquire or amend identity documents; and unfair discrimination in schools, health care facilities, competitive sports, work, access to public services, detention and many other spheres of life”*.²⁶

Pretoria, 2022, p. 16.

21 Ibid., at p. 23.

22 Ibid., at p. 11.

23 Centre for Human Rights, Faculty of Law, University of Pretoria, ‘Study on the human rights situation of intersex persons in Africa’, Pretoria, 2022, p. 10.

24 A media advocacy organization based in Johannesburg, South Africa, that defends the rights of lesbians and transgender and intersex persons in Africa. See <https://www.iranti.org.za>.

25 Support Initiative for People with Congenital Disorders (SIPD) is an advocacy organization dedicated to creating awareness on intersex issues. See <http://sipduganda.org/about-us/>.

26 Centre for Human Rights, Faculty of Law, University of Pretoria, ‘Centre for Human Rights, Iranti-org and SIPD-Uganda host panel discussion on intersex human rights in Africa’, November 2017, https://www.up.ac.za/faculty-of-law/news/post_2592164-centre-for-

The issues described below were identified during key informant interviews for this assessment.

In Zambia, it is apparent that intersex persons face discrimination in the medical sector. Intersex persons may have anatomical features or a combination of anatomical features that are unusual; however, this does not necessarily constitute ‘illness’. Yet, by and large, Zambian society and medical approaches to intersex persons operate on the assumption that some people are anatomically normal and others not, and that intersex people have a disorder of sex development (a medical condition) requiring a prescribed medical intervention to correct this ‘disorder’. Social norms, including discriminatory stereotypes, taboos, prejudices and beliefs, and the vulnerable position of young children, lead to poor standards of care and ineffective medical approaches, medical abuse towards intersex persons and violations of the rights of the child. In the health sector, medical classifications and nomenclature are applied to an intersex person, with discriminatory attitudes reported, and little understanding of and/or respect for and protection of broader rights to health and development. This can have a lifelong impact on the physical and mental health and well-being of intersex persons.

“There is a lack of empathy from health personnel.”

“Sometimes we find it difficult to present our issues before medical personnel because our issues are not normally medical in nature. For example, we find it difficult to respond to questions like ‘how are you feeling?’ and ‘how may I help you?’ These are difficult questions to answer because there is nothing medically wrong with us.”

“We feel confused when health personnel refer our cases to other health personnel who do not know how to handle our cases. It is important that the doctor who deals with you coordinates the treatment from start to finish and supervises all other support staff.”

“Of late, we have noted with dismay how some doctors have gone on to perform surgery on intersex children even without the consent of parents.”²⁷

In addition, law and policy fail to recognize, protect and provide for the rights of intersex people. As is set out in further detail below, intersex people are, for the most part, ‘invisible’ in law, regulations and policy.²⁸ The Constitution of Zambia, for instance, provides for non-discrimination on the grounds of sex. However, laws tend to define sex as being male and female, man or woman, girl or boy. As a result, the law in itself may exclude those intersex persons who fall outside binary concepts of male or female. Laws such as the Zambian Births and Deaths Registration Act, the Employment Act, the Education Act, the Prisons Act and the Gender Equity and Equality Act, for instance, all provide a binary definition of sex and thus may not address and provide for all intersex persons directly.

“When I went to the UTH to look for my birth record, I discovered that part of my records were missing. Certain information regarding my birth date and gender were missing because the health personnel attending to my case were in a dilemma and did not know how to record my gender.” — Mphatso, Intersex Society of Zambia

This impacts intersex persons in various ways, starting from childbirth. For instance, the legal framework reinforces societal expectations and often guides parental actions—such as consenting to surgery on intersex infants so that the child can be identified with a chosen sex.²⁹ It also impacts an intersex person’s right to privacy and to freedom of expression, limiting their ability to self-identify

[human-rights-iranti-org-and-sipd-uganda-host-panel-discussion-on-intersex-human-rights-in-africa](https://www.human-rights-iranti-org-and-sipd-uganda-host-panel-discussion-on-intersex-human-rights-in-africa).

27 Focus group discussion with the Intersex Society of Zambia, 2021.

28 Phiri, P., ‘Intersex Activist in Zambia Sheds Light on Misunderstood Group’, Global Press Journal, January 2020, <https://globalpressjournal.com/africa/zambia/intersex-activist-zambia-sheds-light-misunderstood-group/>.

29 Office of the High Commissioner for Human Rights, ‘Background Note: Human Rights Violations Against Intersex People’, OHCHR, Geneva, October 2016, pp. 27–29, <https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsAgainstIntersexPeople.pdf>.

in later life, since their identity is chosen on their behalf and changing their identity documentation requires difficult and often impossible legal processes.

“There is inadequate support offered to parents of intersex children, especially those from poor backgrounds.”

“We face a lot of challenges when it comes to changing our gender. To change the birth certificate, we must go through long and tedious processes of medical tests.”³⁰

In the public sphere, intersex persons feel they are not accommodated and face increased marginalization. At the community level, intersex persons report bullying, humiliating and degrading treatment and marginalization because of the lack of understanding of their status.

“We face a lot of stigma due to society’s beliefs, traditional backgrounds and cultural differences.”

“Public infrastructure such as toilets are not sensitive to the needs of intersex persons e.g., toilets are only designated for male and female.”³¹

Sensationalist media attention, in instances where intersex persons claim their rights, may result in further discrimination, humiliation, bullying and non-acceptance; this further impacts their willingness and ability to access justice for rights violations.

Given the situation above, it is clear that the Zambian legal and policy framework and programmatic responses need to provide, at a minimum, for the following:

- a. clarity on the interpretation of laws preventing non-discrimination on the basis of sex, to ensure that it is defined broadly to protect intersex persons from discrimination (e.g. on the grounds of sex, sexual traits, characteristics or intersex status); and/or
- b. specific protection in law for the rights of intersex people to equality and non-discrimination and that prohibits discrimination against intersex persons in all spheres of society, including at family and community level, within education, in the workplace, in health-care, traditional, religious and cultural institutions and in social services, among others;
- c. laws, regulations, and policies that specifically protect the sexual and reproductive health and rights (SRHR) of intersex persons, including:
 - promoting non-discriminatory access to appropriate health-care services with voluntary and informed consent;
 - protecting medical confidentiality for intersex persons; and
 - prohibiting medical interventions, including surgery and sterilization, on intersex infants without voluntary and informed consent, and promoting the participation of intersex persons in all health decisions;
- d. laws, regulations and administrative processes that recognize the dignity and the identity of intersex persons, make provisions (in various ways) for the registration of intersex persons at birth and allow for amendments of sex or gender markers on birth registration and other official documentation at a later stage of life;

30 Focus group discussion with the Intersex Society of Zambia, 2021.

31 Ibid.

- e. policies and procedures that support the participation and inclusion of intersex persons in decision-making structures and processes that affect their rights;
- f. programmes and interventions to sensitize service providers, such as health-care providers, on the rights and sexual and reproductive health (SRH) needs of intersex persons;
- g. strengthened awareness of rights and access to justice for rights violations for intersex persons; and
- h. strengthened evidence on the nature and extent of stigma, discrimination and rights violations and their impact on intersex persons.

Following consultations in 2017, the Centre for Human Rights made the following specific recommendations urging States to implement measures to, inter alia:

- protect the physical integrity of intersex children by prohibiting intersex genital mutilation and other unnecessary medical interventions;
- investigate and prosecute incidents of abandonment, abuse, violence against or infanticide of intersex children;
- prohibit and address the root causes of discrimination on the basis of intersex traits, characteristics or status, including investigating and prosecuting human rights violations against intersex persons;
- provide training on the needs and human rights of intersex persons for all public service providers, including health-care personnel, educators, law enforcement and the judiciary, and investigating and prosecuting human rights violations against intersex persons; and
- amend legislative and develop administrative processes that allow intersex persons to obtain identity documents and, if necessary, amend sex markers on birth certificates and official documents.³²

³² Centre for Human Rights, Faculty of Law, University of Pretoria, 'Centre for Human Rights, Iranti-org and SIPD-Uganda host panel discussion on intersex human rights in Africa', November 2017, https://www.up.ac.za/faculty-of-law/news/post_2592164-centre-for-human-rights-iranti-org-and-sipd-uganda-host-panel-discussion-on-intersex-human-rights-in-africa.

Chapter 2

Methodology

This assessment aims to assess the legal and policy framework in Zambia, to identify protections, gaps and challenges in Zambian law to protect and promote the rights of intersex persons, and to make recommendations for the review and reform of laws, regulations and policies.

It included a desk review that considered the following:

- a review of national laws that impact the conducive management, treatment and care of intersex persons and/or that may be harmful to intersex persons in public and private health facilities in Zambia;
- a review of international, regional and national human rights documents, guidance and protocols that impact the rights of intersex persons and/or that relate to responses to intersex persons in public and private health facilities and in broader society; and
- a review of human rights documentation, reports and studies regarding rights of intersex persons internationally and within Zambia (where available).

The desk review sought to analyse the legal and policy framework, to identify gaps and challenges in the application of the law. A 'gap' may be manifested as a failure in the coverage, comprehensiveness, rationality or appropriateness of the legal framework for intersex persons and how it is implemented in practice. These gaps may include overlaps or inconsistencies within the legal framework that might result in uncertainty or ambiguity. The legal framework was analysed, taking into account international best practices on the management, treatment, care and protection of the rights of intersex persons.

In addition, key informant interviews and focus group discussions were held with intersex persons to consider their views on their access to health services and other issues.

Chapter 3

Review of the International, Regional and National legal and policy environment and its impact on the rights of intersex persons

Zambia is a signatory to many international and regional human rights treaties. These treaties and their optional protocols, as well as regional guidance, establish the foundation upon which national laws are anchored. The rights enshrined in international, regional and Zambian national law, and the obligations upon the State to respect, protect and fulfil these rights, provide important guidance for protecting and promoting the rights of intersex persons.

3.1

International treaties and guidance

[International human rights law](#) lays down obligations for State Parties. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

The principles of human rights include that human rights are universal and inalienable because everyone is born with and possesses the same rights and they can not be taken away. They are indivisible and interdependent because all rights are equal in importance and reliant on none can be fully enjoyed without the other. They apply to all equally without discrimination and all people have the right to participate and be included in decisions that affect their lives. They are upheld by the rule of law and duty bearers are accountable to uphold human rights.

3.1.1

The Universal Declaration of Human Rights

The first international human rights agreement was the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations General Assembly in 1948.³³ The UDHR commits States to protecting the equality rights of all people. Article 1 provides that *“All human beings are born free and equal in dignity and rights.”* Article 2 provides that *“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”*, and article 7 provides further that *“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”* Other key rights set out in the UDHR are discussed further below.

The core principles set out in the UDHR, such as universality, interdependence and indivisibility of rights, equality and non-discrimination, and that human rights simultaneously entail both rights and obligations from duty bearers and rights owners, are reflected in numerous international human rights conventions, declarations, and resolutions that followed from the UDHR.

3.1.2

The International Covenant on Civil and Political Rights

A second key international human rights treaty is the International Covenant on Civil and Political Rights (ICCPR), adopted by the General Assembly as a treaty in 1966, which was intended to give effect to the rights set out in the UDHR. Article 2(1) of the ICCPR also affirms the rights of all people (including intersex persons) to non-discrimination: *“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

³³ United Nations, ‘Universal Declaration of Human Rights’, United Nations, Geneva, 1948.

The ICCPR requires States to take measures, including enacting laws, to give effect to the rights (article 2(2)), and to provide for redress in the event of rights violations (article 2(3)):

Article 2(2): *“Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant.”*

Article 2(3): *“Each State Party to the present Covenant undertakes:*

(a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.

(c) To ensure that the competent authorities shall enforce such remedies when granted.”

Other rights are discussed further below.

3.1.3

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR, also adopted by the General Assembly in 1966, sets out the economic, social and cultural rights of all persons, to be exercised without discrimination of any kind *“as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”* (article 2(2)). Rights include the right to work (article 6) and to just and favourable conditions of work (article 7), the right to social security (article 9), the right of every person to the highest attainable standard of health (article 12) and the rights of all persons to education (article 13).

In terms of article 2(1) of the ICESCR, each State Party to the Covenant *“undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”*

3.1.4

Other key international treaties

Other core treaties in the context of SRH include those set out in Table 1.

Table 1. International human rights treaties

TREATY (DATE OF ADOPTION)	DATE OF RATIFICATION	MONITORING BODY
International Covenant on Economic, Social and Cultural Rights (1966)	10 April 1984	Committee on Economic, Social and Cultural Rights
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)		Committee on Economic, Social and Cultural Rights
International Covenant on Civil and Political Rights (1966)	10 April 1984	Human Rights Committee

Optional Protocol to the International Covenant on Civil and Political Rights (1966)		Human Rights Committee
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989)		Human Rights Committee
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	4 February 1972	Committee on the Elimination of Racial Discrimination
Convention on the Elimination of All Forms of Discrimination Against Women (1979)	21 June 1985	Committee on the Elimination of Discrimination Against Women
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (1999)		Committee on the Elimination of Discrimination Against Women
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	7 October 1998	Committee Against Torture
Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002)		United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
Convention on the Rights of the Child (1989)	6 December 1991	Committee on the Rights of the Child
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)		Committee on the Rights of the Child
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)		
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990)		Committee on the Rights of Migrant Workers
Convention on the Rights of Persons with Disabilities (2006)	1 February 2010	Committee on the Rights of Persons with Disabilities
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)		Committee on the Rights of Persons with Disabilities

Source: World Health Organization, 'Sexual Health, Human Rights and the Law', WHO, Geneva, 2015, https://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf;jsessionid=4470CE457EF62C6DA42CF0578D5312A5?sequence=1.

3.1.5

Key rights arising from international treaties, and their implications for intersex persons

Without going into each and every right, there are several clear human rights principles arising out of these international frameworks that should govern the rights of intersex persons in Zambia, and which Zambia has committed to respect, protect and fulfil:

Freedom from discrimination

Article 2 of the UDHR emphasizes the dignity of the human being and prohibits discrimination on any basis, including sex, birth or other status. The right to equality and non-discrimination is also set out in articles 2, 3, 19 and 26 of the ICCPR. Although the treaties do not specifically mention protection

on the basis of sex characteristics, the listed grounds for non-discrimination are not exhaustive. The *2017 Yogyakarta Principles plus 10 (YP+10)*³⁴ note that non-discrimination in international human rights law includes non-discrimination on the basis of sexual orientation, gender identity, gender expression and sex characteristics. The general understanding that international human rights law applies to discrimination on the basis of sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) is exemplified by treaty bodies' interpretation of the grounds of sex, and their inclusion of SOGIESC under 'other status' provisions in the UDHR and the ICCPR.³⁵ Thus, this core right protects intersex persons from stigma and discrimination.

Protection from torture and cruel, inhuman or degrading treatment

Article 5 of the UDHR prohibits torture and cruel, inhuman or degrading treatment, as does the ICCPR in articles 5 and 7. Article 16 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits "*other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture*" likewise committed by any person acting in an official capacity.

The prohibition against torture is an absolute, non-derogatory human right that may not be subject to any limitation.³⁶ This right, as well as the right to privacy (protected by the UDHR and article 17 of the ICCPR), liberty and security of the person (article 9 of the ICCPR), autonomy and self-determination, protects persons from unlawful invasions of their person, including acts such as medical procedures carried out without free and informed consent. Thus, these human rights principles protect intersex persons from medical procedures, such as intersex surgery, without free and informed consent.

Principle 32 of the YP+10 on the right to bodily integrity³⁷ stipulates: "*Everyone has the right to bodily and mental integrity, autonomy, and self-determination ... No one shall be subjected to invasive or irreversible medical procedures that modify sex characteristics without their free, prior, and informed consent, unless necessary to avoid serious, urgent and irreparable harm to the concerned person.*"

In his 2013 report to the United Nations General Assembly, the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment called on all States to "*repeal any law allowing intrusive and irreversible treatments, including forced genital normalising surgery, involuntary sterilization, unethical experimentation, medical display...*"³⁸

Under the ICCPR and this Convention, Zambia is obliged to take measures to ensure that these rights are fulfilled, which may include prohibiting surgery on intersex infants, requiring education and training for, *inter alia*, medical personnel, and further ensuring that a "*prompt and impartial investigation*" is undertaken into any act that may reasonably constitute torture or cruel, inhuman or degrading treatment in violation of the Convention.³⁹ This will also meet the Sustainable Development Goal 16 commitment to "*significantly reduce all forms of violence and related death rates everywhere*" and

34 International Commission of Jurists, 'Additional Principles and State Obligations 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', 2017, <https://yogyakartaprinciples.org/principles-en/yp10/>.

35 International Labour Organization, 'Information paper on protection against sexual orientation, gender identity and expression and sexual characteristics', ILO, Geneva, 2019, p. 7, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_700554.pdf.

36 United Nations Office on Drugs and Crime, 'Limitations permitted by human rights law', UNODC, July 2018, <https://www.unodc.org/e4j/zh/terrorism/module-7/key-issues/limitations-permitted-by-human-rights-law.html>.

37 International Commission of Jurists, 'Additional Principles and State Obligations 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', 2017, Principle 32, <https://yogyakartaprinciples.org/principle-32-yp10/>.

38 United Nations General Assembly, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez', A/HRC/22/53, Human Rights Council, Twenty-second session, New York, 2013, para. 88, https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf.

39 ICCPR, article 4.

“end abuse, exploitation, trafficking and all forms of violence against and torture of children” by 2030.⁴⁰

Recognition before the law

Article 6 of the UDHR provides that “everyone has the right to recognition everywhere as a person before the law”. The right to a legal identity is important for intersex persons, including intersex children, particularly in the context of their ‘invisibility’ in the legal system and laws—such as those governing birth registration that tend to deny their right to recognition as people before the law. In addition, the Convention on the Rights of the Child provides that every child has the right to be registered immediately after birth and to have a name (article 7(1)), and to be protected by the State (article 19).

Right to privacy, including data privacy and protection

The UDHR and ICCPR protect the right to privacy. Article 12 of the UDHR provides that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation” and that “Everyone has the right to the protection of the law against such interference or attacks.” Similar provisions are reiterated under article 17 of the ICCPR. As part of this protection, data regarding intersex persons in Zambia must be safeguarded and handled ethically. Personal data, including information relating to a person’s sex and sex characteristics, must be handled confidentially.

Right to health

Every person has the right to the highest attainable standard of physical and mental health, protected in article 25 of the UDHR and article 12 of the International Covenant on Economic, Social and Cultural Rights. International law has expanded on the meaning of the right to health,⁴¹ finding that:

- It is an inclusive right extending beyond access to health services to include a wide range of factors and related rights (e.g. the right to equality and non-discrimination) that support the full development of all persons, leaving no one behind.
- The right to health contains freedoms, such as the right to be free from non-consensual medical treatment, and to be free from torture and other cruel, inhuman or degrading treatment or punishment.
- The right to health also contains entitlements, such as the right to non-discriminatory access to information and services, the right to prevention, treatment and control of disease, access to essential medicines, and the right to participation in health-related decision-making.
- Health goods, facilities and services must be provided to all without discrimination.
- All services, goods and facilities must be available, accessible, acceptable and of good quality.

The ‘General Comment on Sexual and Reproductive Health (22/2016)’ issued by the Committee on Economic, Social and Cultural Rights noted that non-discrimination in SRHR includes the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons to be fully respected for their sexual orientation, gender identity and intersex status. Through these General Comments in 2016, it

40 United Nations, ‘Sustainable Development Goal 16: Peace, Justice and Strong Institutions’, United Nations, New York, 2015, <https://sdgs.un.org/goals>.

41 United Nations Committee on Economic, Social and Cultural Rights, ‘General Comment No. 14: The right to the highest attainable standard of health (art.12)(2000)’, OHCHR, Geneva, 11 August 2000.

appears that the Committee has considered ‘sex characteristics’ as another prohibited grounds for discrimination in the context of SRHR, under the ICESCR.

In addition, article 3 of the UDHR and article 6 of the ICCPR provide every person with the right to life. In a number of jurisdictions (including Zambia), the right to life has been interpreted broadly to include the right to health.

Right to access to remedy for rights violations

All persons have the right to a remedy for violations of their rights, whether that remedy be judicial, non-judicial, State or non-State. This means that intersex persons have the right to redress for rights violations perpetrated against them.

Article 8 of the UDHR gives all persons the right to an effective remedy by a competent national tribunal for violations of rights granted by law. In addition, the Convention Against Torture requires States to ensure access to redress and compensation, including means for rehabilitation.

It has been recommended that States arrange for investigations of cases of surgical or other medical treatments reportedly carried out without individuals’ informed consent.⁴² Principles 28 and 29 of the Yogyakarta Principles task States to ensure appropriate redress for those who face rights violations. In addition, the YP+10 recognize a right to truth for victims of human rights violations on the basis of sex characteristics, which should not be subject to statutes of limitations.⁴³

Principle of ‘best interests of the child’

Article 3(1) of the Convention on the Rights of the Child promotes the principle of the best interests of the child as paramount in all matters affecting the child. In 2013, the Committee on the Rights of the Child issued ‘General Comment No. 14 (2013)’ on the right of the child to have his or her best interests taken as a primary consideration, stating that States must ensure that the best interests of the child are a primary consideration in all actions, and should take steps to integrate this principle in practice, ensure education and information on the right to the best interests to all affected persons, and provide redress for violations (e.g. such as forced medical interventions or failure to provide a child with a legal identity),⁴⁴ including:

- *“ensuring that the requirement to consider the child’s best interests is reflected and implemented in all national laws and regulations ... [and] rules governing the operation of private or public institutions providing services or impacting on children”⁴⁵*
- *“establishing mechanisms and procedures for complaints, remedy or redress in order to fully realise the right of the child to have his or her best interests appropriately integrated and consistently applied”⁴⁶*

42 Office of the High Commissioner for Human Rights, ‘Background Note: Human Rights Violations Against Intersex People’, OHCHR, Geneva, October 2016, p. 33, <https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf>.

43 International Commission of Jurists, ‘Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles’, 2017, Principle 37, <https://yogyakartaprinciples.org/principle-37-yp10/>.

44 United Nations Committee on the Rights of the Child, ‘General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration’, United Nations, New York, 2013, article 3, para. 1.

45 Ibid., article 15(a); note that this principle is also contained in Zambia’s Health Professions Act No. 24 of 2009.

46 Ibid., article 15(c).

- *“providing information and training on the best interests of the child, and its application in practice to all those making decisions that directly or indirectly impact on children, including professionals and other people working for and with children”*⁴⁷
- *“providing appropriate information to children in a language they can understand”*⁴⁸
- taking steps to *“combat all negative attitudes and perceptions which impede the full realisation of the right of the child to have his or her best interests assessed and taken as a primary consideration, through communication programmes involving mass media and social networks as well as children, in order to have children recognised as rights holders.”*⁴⁹

In 2022, the Committee on the Rights of the Child issued Concluding Observations on Zambia’s combined fifth to seventh reports to the Committee. It noted the general recommendations by the Committee for the Elimination of Discrimination Against Women and the Committee on the Rights of the Child on harmful practices and recommended that Zambia *“ensure that intersex children are not subjected to unnecessary medical or surgical treatment, without their consent, in line with the rights of the child to bodily integrity, autonomy and self-determination; and that the victims have access to justice, reparation and indemnity”*.⁵⁰

3.1.6

World Health Organization guidance on sexual health, human rights and the law

Based on rights arising from international law, the World Health Organization (WHO) has provided guidance on minimum standards to ensure health services for the promotion and protection of sexual health, including for intersex persons. These standards are useful for this assessment and can help to guide the analysis of Zambia’s legal and policy framework. The guidance recommends that States create enabling legal and policy frameworks and eliminate barriers, including unnecessary restrictions from policies and regulations, to promote access to services for sexual health. In particular, an enabling legal and policy framework should:

- ensure access to essential medicines for all without discrimination;
- ensure the availability of health-care facilities and trained providers within reach of the entire population to ensure access to sexual health services for all. These sexual health services should be provided by physicians, nurses, midwives and auxiliary nurses;
- remove conscientious objections by health-care providers to enable access for all citizens;
- ensure non-criminalization of sexual health-related services in public and private health-care facilities to promote access for all citizens;
- ensure equality and respect for human rights in the provision of sexual health services as a crucial determinant of whether, and to what extent, people seek health services when needed;
- guarantee privacy and confidentiality;
- foster informed decision-making;
- ensure skilled health-care personnel; and

⁴⁷ Ibid., article 15(f).

⁴⁸ Ibid., article 15(g).

⁴⁹ Ibid., article 15(h).

⁵⁰ United Nations Committee on the Rights of the Child, ‘Concluding observations on the combined fifth to seventh reports of Zambia’, CRC/C/ZMB/CO/5-7, United Nations, New York, June 2022.

- provide for the quality of supplies and equipment.

The guidance recognizes the specific needs of particular populations, including intersex persons, in efforts to eliminate discrimination in access to health services, and recommends that:

- adolescents (under 18 years of age) should be targeted with specific health services that meet their needs;
- marital status should not be a hindrance to accessing health services;
- incarcerated individuals should have uninhibited access to sexual health services in correctional settings;
- migrants and asylum seekers who are mostly undocumented should be given access to sexual health services despite their illegal status, lack of health insurance and/or practical difficulties in accessing care;
- HIV status should never be a hindrance to health-care support;
- people with disabilities should be given reasonable accommodation to access health services;
- sexual orientation and gender identity should not be used to hinder anyone accessing health services;
- transgender and gender-variant people should be supported not to experience any health disparities and barriers in accessing appropriate health services, particularly as it pertains to their sexual and reproductive health care; and
- intersex people should not face discrimination or stigma in the health system; they should access quality of care which is devoid of institutional violence and forced interventions throughout their lifetime.

The 2014 ‘Interagency Statement on Eliminating Forced, Coercive and Otherwise Involuntary Sterilization’, including non-medical interventions, is also important for protection of the rights of intersex persons from forced, coerced or otherwise involuntary medical procedures resulting in sterilization. The report states that “*irreversible invasive medical interventions should be postponed until a child is sufficiently mature to make an informed decision*”, among other guiding principles for sterilization medical procedures.⁵¹

3.2

Regional: African treaties, instruments, protocols and guidelines

At the continental level, Zambia is a Member State of the African Union and a State Party to the African Charter on Human and Peoples’ Rights (‘the African Charter’), which it ratified in 1984. Zambia has also ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (on 2 May 2006), the African Youth Charter (on 16 September 2009) and the Southern African Development Community (SADC) Protocol on Gender and Development (on 26 November 2015). The core human rights set out in these regional treaties provide important guidance for protecting and promoting, *inter alia*, equality, including gender equality, non-discrimination and SRHR of all persons, including young people; they thus provide important protection for intersex infants, adolescents and adults in Zambia.

⁵¹ World Health Organization, ‘Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement’, OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, Geneva, 2014, https://www.unaids.org/sites/default/files/media_asset/201405_sterilization_en.pdf.

3.2.1

The African Charter on Human and Peoples' Rights⁵²

The African Charter was adopted by the Organisation of African Unity in Nairobi, Kenya, on 27 June 1981 and came into effect on 21 October 1986. It is the principal human rights treaty for the protection and promotion of human rights in the whole of Africa. The Charter has 26 substantive provisions which oblige Zambia and other African States to respect, protect, promote and fulfil the human rights of their citizens. Pertinent rights in the Charter that protect intersex persons from common violations discussed in this document include, among others:

- the right to equality and non-discrimination;
- the right to life;
- the right to dignity of the person;
- the right to liberty and security of the person;
- the right to work;
- the right to education; and
- the right to health.

As with international human rights instruments, this human rights treaty emphasizes that human rights apply to all people. This means that no person should be denied the exercise of their fundamental human rights through discrimination. Every person has the right to be treated equally and with dignity, and this is inclusive of intersex persons, who are entitled to the rights accorded to all citizens.

Article 2 of the African Charter provides for the right to equality and non-discrimination as follows: *“Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or other status.”*

Article 3 provides for equality before the law and equal protection of the law: *“Every individual shall be equal before the law; every individual shall be entitled to equal protection of the law.”* Article 4 recognizes that *“human beings are inviolable, and every human being shall be entitled to respect for his life and integrity of his person”*. Article 5 states that *“every individual shall have the right to the respect of the dignity inherent in a human being and to recognition of his status”*.

The African Charter therefore recognizes that all citizens of Member States, including intersex persons, are human beings, entitled to equality and inherent dignity.

The Charter is overseen by the African Commission on Human and Peoples' Rights, with the mandate to protect and promote human rights enshrined in the African Charter, and the African Court.

⁵² Organisation of African Unity, 'African Charter on Human and Peoples' Rights', Organisation of African Unity, Nairobi, 1981.

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS RESOLUTION ON THE PROMOTION AND PROTECTION OF THE RIGHTS OF INTERSEX PERSONS IN AFRICA

Since 2017, a number of events have taken place on the sidelines of African Commission sessions, hosted by the Centre for Human Rights (University of Pretoria, South Africa) and a number of national intersex organizations. At one of the sessions in Banjul, in November 2017, former Commissioner L. Mute emphasized the important role of the African Commission in setting the minimum standards that guide legislative and policy development at national level to overcome rights violations against intersex people. A useful way to achieve this may be by issuing soft law standards on human rights issues that require national-level attention.

In July 2019, the initial findings of the 'Study on the human rights situation of intersex persons in Africa' published by the Centre for Human Rights were presented at the 26th extraordinary session of the African Commission for its feedback.⁵³

In March 2023, the African Commission passed *Resolution 552* on the promotion and protection of the rights of intersex persons in Africa in its 74th ordinary session. The resolution calls upon States to promote and protect the rights of intersex persons and stop non-consensual genital surgical, hormonal and/or sterilization practices, which violate their right to bodily integrity, physical integrity and self-determination. It also calls for duty bearers to end all human rights violations against intersex persons, particularly the severe forms of infanticide and child abandonment, including prohibiting discrimination based on intersex traits, sexual characteristics and status in education, health, employment, competitive sports and access to public services, as well as ensuring decisions regarding intersex minors are taken in their strict and sole best interest. It further calls for educational, counselling, training and legal reform services for better protection of intersex rights and the environment in which their human rights defenders work.⁵⁴

3.2.2

The Southern African Development Community 'Minimum Standards for the Integration of HIV & Sexual and Reproductive Health in the SADC Region'

As a Member State of SADC, Zambia has signed up to various SADC protocols, including those on HIV and SRHR. The SADC 'Minimum Standards for the Integration of HIV and Sexual & Reproductive Health in the SADC Region' include the following guiding principles for integrated HIV and SRH services which should apply equally to intersex persons in Member States:

- **Human rights-centred, gender-sensitive and respectful of confidentiality:** SRH and HIV services should be guaranteed and provided for all people in a gender-sensitive and age-responsive manner which respects the client's confidentiality.
- **Involvement and participation:** People living with HIV, children, adolescents and youth, as well as other key populations and members of the community, should be adequately consulted and supported to participate at all levels of SRH and HIV integration programming.
- **Equality and non-discrimination:** Policies, programmes and services should uphold practices of non-discrimination in all situations, regardless of HIV status, age, sex, gender, sexual orientation, religion, and sociocultural and economic status.

53 Centre for Human Rights, Faculty of Law, University of Pretoria, 'Study on the human rights situation of intersex persons in Africa', Pretoria, 2022, pp. 26–27.

54 <https://achpr.au.int/en/adopted-resolutions/resolution-promotion-and-protection-rights-intersex-persons>

- **Partnerships and holistic approach:** Ensure the provision of comprehensive information and services for SRH, HIV and AIDS and address the related social and economic determinants by engaging in meaningful partnerships and networks with clearly defined roles and responsibilities.
- **Evidence-based and context-specific:** Implementation of SRH and HIV integration interventions should be guided by evidence and contextualized to country-specific needs to ensure sustainability and ownership.
- **Equity and accessibility:** The importance of ensuring universal access to integrated SRH and HIV services for all is recognized, including the particular needs of key populations in the provision of services.

The Minimum Standards provide for the following guidance and recommendations at law, policy and planning level:

- Conduct an assessment of legal frameworks that impact access to SRH and HIV services and information for key populations, especially adolescents and youth, men who have sex with men, and sex workers. Review or develop new legal frameworks based on the findings of the assessment.
- Review and revise existing policies or develop new policies that support access to integrated SRH and HIV services for key populations, especially adolescents, youth, migrant populations, LGBTI persons, and people with disabilities.
- Review and revise explicit interventions for key populations in line with the SRH and HIV operational plan.⁵⁵

At systems level, the Minimum Standards recommend that Member States provide the structures necessary to ensure that SRH and HIV integration policies are translated into practice at facility and community levels, including planning, implementation, and monitoring and evaluation, and put systems in place, including the necessary facility and community service provision modifications and infrastructure, to facilitate access to SRH and HIV services by key populations, especially adolescents, youth, LGBTI persons, and people with disabilities.⁵⁶

3.3

Other regional-level guidance and recommendations

The United Nations Population Fund ‘Regional Strategic Guidance for Young People living with Disabilities in East and Southern Africa’

In its regional guide for East and Southern Africa, the United Nations Population Fund (UNFPA) provides the following useful guidance for promoting the rights of young people with disabilities:⁵⁷

- Countries should ensure that persons with disabilities are regarded as a vulnerable group. This helps to ensure they are included in programmatic and funding responses. Persons with disabilities can also be a key population, but this should be in addition to, not instead of, their inclusion as a vulnerable group.

55 Southern African Development Community, ‘Minimum Standards for the Integration of HIV and Sexual & Reproductive Health in the SADC Region’, SADC, Gaborone, 2015, p. 19, https://resourcecentre.savethechildren.net/pdf/sadc_minimum_package_of_services.pdf/.

56 Ibid., at p. 21.

57 United Nations Population Fund, ‘Regional Strategic Guidance to increase access to Sexual and Reproductive Health and Rights (SRHR) for Young Persons with Disabilities in East and Southern Africa’, UNFPA, KPMG and UKAid, New York, 2017.

- Countries should use the ‘key principles’ provided in this guidance when considering the quality of current programme and service provision to ensure they meet the needs of young persons with disabilities. Countries should ensure programmes and services intervene at all levels of the socio-ecological framework.
- Monitoring and evaluation is a key element of service delivery and programmes. Governments should establish a number of key performance indicators to establish current access (baseline) and track improvements to access. Evaluations should be used to understand what works and how to improve access.
- Countries should continue to develop their youth-friendly services strategy for health-care services. The needs of young persons with disabilities should be mainstreamed into this process by, for example, consulting with young persons with disabilities on the specific challenges and barriers they experience, which may vary by country, and ensuring that the policies, strategies and initiatives to improve access to services by youth pay specific consideration to young persons with disabilities as part of the youth audience.
- Efforts to ensure services are youth-friendly should pay specific attention to the attitudes of the health-care workforce and staff and challenge inappropriate attitudes towards young persons with disabilities and their SRHR in particular.
- Countries should ensure that programmes to enhance access to SRHR include both school and out-of-school components. As young persons with disabilities are less likely to attend school than other youth, particular attention needs to be paid to out-of-school programmes to ensure they include specific attention to young persons with disabilities.
- Countries should also identify gaps in mainstream service provision where additional and specific SRHR services and programmes are needed to ensure access for young persons with disabilities.
- A range of different programmes and different target audiences should be considered in national planning efforts. While young persons with disabilities themselves are a key part of the target audience, so are their carers and families, who may need help and information to understand SRHR and tools to engage in dialogue to help break down generational gaps and cultural barriers.
- Countries should consider media and other campaigns to help change attitudes and stigma towards young persons with disabilities. This should include addressing specific myths related to their SRHR.
- Decentralization of SRHR services and task-sharing, such as using community health workers to provide some elements of SRHR services, should be considered as a way of increasing access to services.

RECENT DEVELOPMENTS IN THE EUROPEAN UNION AND THE UNITED STATES

In 2019, the European Parliament adopted a resolution that condemns genital ‘normalizing’ surgeries and commends countries in Europe that have prohibited such surgeries, such as Malta and Portugal. The resolution stresses the importance of flexible birth registration procedures and deplores the lack of recognition of sex characteristics as a grounds for discrimination across the European Union.⁵⁸

In 2017, the Inter-American Commission on Human Rights issued a press statement urging States to end violence against intersex persons. The Commission also observed that, because of society’s lack of awareness about intersex persons, intersex persons and their families generally had profound feelings of shame and fear, which often contribute to keeping the issue invisible and secret. The Commission urged States to urgently prohibit surgeries and medically unnecessary procedures on intersex children. It further urged States to respect the autonomy of all intersex persons and all dimensions of their right to health, their right to physical and psychological integrity, and their right to live free from all forms of violence and discrimination, and to prevent all inhuman and degrading treatment. It also urged States to structure themselves and their services to be able to provide intersex persons of all ages with complete information about their health so that they are free to decide about their bodies and life plans. States were also urged to act with due diligence to provide training to officials in health care, the justice system and other relevant sectors about the realities faced by intersex persons and the need for full respect of all their human rights.⁵⁹

3.4

The Zambian Constitution

Intersex persons enjoy and are entitled to all the fundamental human rights enshrined in the Zambian Constitution. The Constitution of Zambia (Amendment) Act No. 2 of 2016 does not specifically make reference to the rights of intersex people. However, it provides for the rights and freedoms of all citizens (which article 266 notes applies to all citizens of Zambia) and the non-discrimination of persons on various grounds. It is not required that intersex persons be specifically mentioned for them to enjoy their rights and fundamental freedoms and to be protected from violations of their rights.

The Constitution also includes mechanisms for redress when fundamental rights and freedoms have been infringed. As the supreme law, any infringement of the Constitution may allow a person to petition the High Court (when the breach of rights relates to Part 3, the Bill of Rights), or the Constitutional Court, when the breach concerns any part of the Constitution other than the Bill of Rights. In addition, article 193 (2) (e) of the Constitution, as amended, specifically imposes an obligation on the Police Service to uphold the Bill of Rights in the enforcement of its duties.

Notable provisions include articles 8 and 11, the Bill of Rights and the definition of discrimination, among others.

Article 8 embodies the national values and principles, which include morality and ethics; patriotism and national unity; democracy and constitutionalism; human dignity, equity, social justice, equality and non-discrimination; good governance and integrity; and sustainable development.

58 European Parliament, ‘Resolution of 14 February 2019 on the rights of intersex people’, 2018/2878(RSP), European Parliament, Brussels, 2019, [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2018/2878\(RSP\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2018/2878(RSP)).

59 Inter-American Commission on Human Rights, ‘IACHR Urges States to End Violence and Harmful Practices against Intersex Persons’, November 2017, http://www.oas.org/en/iachr/media_center/PReleases/2017/189.asp.

Article 11 recognizes the fundamental rights and freedoms of all persons. It states: *“It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part.”*

The Zambian Constitution provides every person with, among others:

- the right to life (article 12);
- the right to personal liberty (article 13);
- the right to freedom from torture, inhuman or degrading treatment (article 15);
- the right to privacy (article 17);
- the right to freedom of expression (article 20);
- the right to freedom of assembly and association (article 21);
- the right to protection from discrimination (article 23); and
- the protection of young people from exploitation (article 24).

These rights are not absolute but are subject to limitations, to ensure that the enjoyment of these rights and freedoms does not prejudice the rights and freedoms of others, or the public interest.

Article 266 defines discrimination as *“directly or indirectly treating a person differently on the basis of that person’s birth, race, sex, origin, colour, age, disability, religion, conscience, belief, culture, language, tribe, pregnancy, health, or marital, ethnic, social or economic status”*.

Article 259 also provides specific protection for people with disabilities.

In international law (discussed further below), discrimination is prohibited on the basis of not only sex, but also sexual orientation, gender identity, expression and sex characteristics. ‘Sex’, in most Zambian laws, envisages a binary definition of male or female. There has been no jurisprudence on interpreting the term under the Zambian Constitution in its application to sex characteristics or intersex people. However, the Hellen Sibande case did create a legal precedent reflecting an acceptance to include and to extend protection to intersex persons in law and noted the importance of the law being responsive to changing circumstances.

So, while the Zambian Constitution clearly sets out a number of important rights that help to protect intersex people from the rights violations they experience, there is limited interpretation of and experience in applying these rights to intersex people in Zambia. This is a critical gap potentially limiting easily accessible protection from discrimination for intersex people.

3.5

National legislation

3.5.1

The Employment Code Act No. 3 of 2019

Like everyone else, intersex employees require respect, support and the right to work free from discrimination or harassment. In building more inclusive workplace cultures for intersex employees, it is important for national laws to be inclusive and to address discrimination issues in the workplace.

The Employment Code Act provides for employment matters in Zambia. Section 5(1) obliges employers to promote equal opportunity in employment and eliminate discrimination. Section 5(2) prohibits direct or indirect discrimination in any employment policy or practice against any employee or prospective employee on grounds of colour, nationality, tribe or place of origin, language, race, social origin, religion, belief, conscience, political or other opinion, sex, gender, pregnancy, marital status, ethnicity, family responsibility, disability, status, health, culture or economic grounds.

It is notable that the Employment Code Act provides for non-discrimination on the grounds of sex, gender and disability, all of which could arguably be used to protect intersex persons from discrimination. However, as with the Constitution, the Employment Code Act does not provide specific protection for intersex persons, or protection from discrimination on the basis of sexual orientation, gender identity, expression or sex characteristics. It does not directly define or address intersex persons, nor does it (or any regulations) address the specifics of ‘reasonable accommodation’ for employees such as intersex persons within the working environment.⁶⁰

3.5.2

The Gender Equity and Equality Act No. 22 of 2015

The objectives of the Gender Equity and Equality Act are wide. It aims to establish the Gender Equity and Equality Commission and provide for its functions and powers; to provide for measures and strategic decisions in all spheres of life, to ensure gender equity, equality and integration of both sexes in society; to promote gender equity and equality as a cross-cutting issue in all spheres of life; to stimulate productive resources and development opportunities for both sexes; to prohibit harassment, victimization and harmful social, cultural and religious practices; to provide for public awareness and training on issues of gender equity and equality; to provide for the elimination of all forms of discrimination against women, empower women and achieve gender equity and equality by giving effect to the Convention on the Elimination of all Forms of Discrimination against Women, the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa and the SADC Protocol on Gender and Development; and provide for matters connected with, or incidental to, the foregoing.

As with the Employment Act, while the Gender Equity and Equality Act does not specifically include or define intersex, it does include various provisions that may protect the rights of intersex persons. For instance, sections 15 and 16 protect all persons from discrimination on the basis of sex. Section 15(1) provides that no person, public body or private body shall discriminate against any sex. Section 16(1) goes further to state that a person, public body or private body has a duty to uphold the rights of both sexes, and to respect and safeguard the dignity of both sexes. Section 16(2) provides that a person, public body or private body shall not exploit or subject any person to abusive, violent or degrading treatment. Any person who violates these provisions is liable to criminal punishment.

⁶⁰ Note that section 35(3) of the Persons with Disabilities Act No. 6 of 2012 provides for reasonable accommodation for persons with disabilities in the workplace, which is defined as “*necessary and appropriate modification, adaptation and adjustments, not imposing undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms*” (section 2). See further below for a discussion on intersex people and disability rights.

The Act also specifically protects sexual and reproductive rights in section 21. Section 32(3) provides that a health officer shall respect the SRH rights of every person without discrimination and respect the dignity and integrity of every person accessing SRH services. This mandate placed on health workers to uphold the objectives of the Act is important for intersex persons who may experience discriminatory treatment in the health sector. They may have a claim for discrimination within health care on the basis of their intersex status.

Section 39 of the Act criminalizes sexual harassment, which is defined in the Act as including “*conduct or contact of a sexual nature, such as having physical contact, making advances, comments or innuendos without the consent of a person; being offensive, humiliating or intimidating to a person in a suggestive manner; or threatening or imposing a condition on a person for doing or undertaking anything or creating a hostile environment for an employee*”. Protection against sexual harassment may further protect intersex persons from humiliating and/or degrading verbal and physical treatment.

Therefore, it is clear that there are various provisions in the Act that may protect the rights of intersex persons from discrimination on the basis of their sex (assuming an expansive, non-binary interpretation of sex), including within the health sector, as well as from cruel, inhuman or degrading treatment (such as forced medical interventions) or offensive treatment (such as discrimination and stigmatizing treatment) that they may experience on the basis of their intersex status.

3.5.3

Persons with Disabilities Act No. 6 of 2012

By approaching disability from a social perspective, as described in General Comment No. 6, articles 2 and 3 of the Convention on the Rights of Persons with Disabilities (which Zambia has ratified), intersex persons may seek protection as people with a disability under the CRPD and the equally wide umbrella of the definition of disability under the Persons with Disabilities Act.

The Act defines disability as a “*permanent physical, mental, intellectual, or sensory impairment that alone, or in a combination with social or environmental barriers, hinders the ability of a person to participate in society fully or effectively on an equal basis with others*”.

The Act defines discrimination as “*any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field, and includes all forms of discrimination, such as denial of reasonable accommodation, and the term ‘discrimination on the basis of disability’ shall be construed accordingly*”.

The Act further provides for general principles of non-discrimination that apply to persons with disabilities such as respect for the inherent dignity of persons with disabilities; individual autonomy, including the freedom to make one’s own choices, and independence of persons; non-discrimination; recognition as persons before the law; respect for physical and mental integrity; independent living; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; gender equality; respect for the evolving capacities of children with disabilities; and respect for the right of children with disabilities to preserve their identity.

While intersex persons are not disabled *per se*, they are arguably protected under the disability legislation, given the *social barriers* they experience, as well as the impact of physical sex characteristics on their SRH and/or the impact of medical interventions, including infant intersex surgery, on their health throughout their lifetime. This Act therefore strengthens protection from discrimination under the ambit of disability rights, particularly in its emphasis on providing equality of opportunity and promoting the inclusion of people with disabilities.

If protection is extended to intersex people, this Act may arguably strengthen protection of the rights of intersex persons to equality before the law, including gender equality, and protection from discrimination, the right to autonomy and freedom to make their own choices, respect for physical and mental integrity, the rights to full and effective participation and inclusion in society, equality of opportunity and accessibility to services. An intersex person under this Act and article 250 of the Constitution would be able to take up any public office without being discriminated against on the grounds of disability.

3.5.4

The Health Professions Act of Zambia No. 24 of 2009

The Health Professions Act includes provision for legal and ethical considerations in obtaining a patient's informed consent for medical procedures, which applies to all persons, including intersex persons. Health professionals are obliged to promote voluntary decision-making and are accountable and required to comply with ethical tenets of informed consent. This is an important protection for intersex persons who may be subjected to medical procedures without informed consent. The guidelines provide that patients have the right to information about health services available to them, and to voluntary, informed consent to medical investigation and treatment. This means that patients have the right to information about their medical status and the treatment options available to them, according to the nature of their medical needs, the complexity of the treatment, the risks associated with the treatment or procedure, and the patient's own wishes. Patients also have a right to refuse health services, and to know the implications and risks of such refusal. However, more specific protection may be necessary to ensure that intersex persons (and their parents and guardians) are provided with full, up-to-date, accurate and evidence-informed scientific, medical and psychological information to enable reasoned decision-making, and are not subjected to undue pressure, to truly make voluntary decisions.

An additional problem relates to the age of consent. In Zambia, children of 16 years of age are legally entitled to consent independently to medical treatment.⁶¹ However, in the case of children below the age of consent, health practitioners must assess a child's capacity to assent or refuse a proposed investigation or treatment before they provide it, but in terms of the law, a parent or legal guardian is lawfully entitled to provide consent on behalf of children below 16 years of age. This may pose difficulties for intersex children at puberty, faced with potential medical decisions and unable to provide independent consent (or refusal) for medical treatment or operations. There may be a need for a lower age of consent, as well as the need for more specific protection from harm, prohibitions on certain interventions (e.g. infant surgery) or stringent conditions, to protect intersex infants and young children whose parents/legal guardians may be in a lawful position to make decisions on their behalf until they reach the legal age of capacity.

Zambia's HIV and tuberculosis funding from the Global Fund to Fight AIDS, Tuberculosis and Malaria for the period 2020–2022 includes provision for training of health workers on human rights issues, with a particular focus on key populations affected by HIV, and young people.⁶² While an in-depth analysis of the curriculum was not possible for the purposes of this research, it is understood that intersex persons and issues are generally not a primary focus of HIV-related human rights training, which tends to focus primarily on HIV-related inequalities affecting gay, bisexual and other men who have sex with men, and transgender persons. However, broader content stressing the rights of patients to equality and non-discriminatory access to health services, and to be free from forced or coerced treatment, will be relevant for the rights of intersex persons. In addition, training of birth attendants (such as midwives) on the rights of intersex infants is equally important, given that only a third of all rural Zambian women give birth within a health-care facility.⁶³

61 United Nations Population Fund, 'Harmonizing the Legal Environment for Adolescent Sexual and Reproductive Health and Rights: A review in 23 Countries in East and Southern Africa', UNFPA, Johannesburg, 2019.

62 Global Fund to Fight AIDS, Tuberculosis and Malaria, 'Zambia HIV/TB Funding Request 2020–2022', <https://data.theglobalfund.org/location/ZMB/documents>.

63 Gabrysch, S. et al., 'The Influence of Distance on Level of Care on Delivery Place in rural Zambia', *Plos Medicine*, January 2011, <https://>

3.5.5

Birth and Death Registration Act 1973, chapter 51 of the Laws of Zambia

The Birth and Death Registration Act provides for the registration of births and the issuance of birth certificates and creates a uniform law for the registration of all births and deaths in Zambia, without distinction of origin or descent.

Section 5 provides that the birth of every child born and the death of every person dying in Zambia after the commencement of the Act shall be registered in accordance with the provisions of the Act. Registration Form 14, which provides for the particulars of registration, requires entry of a child's sex. The Act is very narrow in its application and does not provide for what should happen when the parents of a child born intersex are unsure of how to reflect the child's sex on the form outside binary categories of male or female, what procedures should be followed, how such a determination should be made, and what should be done in the event of needing to change it in the future.

Section 17, however, provides for the alteration of a child's name. It states that when the birth of a child has been registered before it has received a name or the name by which it was registered is altered, the child's parent or guardian may, within two years of the registration, on payment of the prescribed fee and on providing such evidence as the Registrar-General may think necessary, register the name or alter the name that has been given to the child.

This provision may support an intersex person to change their name at a later stage to align with their identity. However, it contains a limitation of two years, which does not allow for the parents/guardians of an intersex child to change the child's name after a period of two years. It also does not enable an intersex child of sufficient age or maturity to apply on their own. In addition, the provision does not support the legal challenges faced by intersex persons and their parents which arise as a consequence of their birth, nor does it allow for reflection of a child's status as undetermined at birth, late registration or changes of sex markers on official documents. This can serve to exacerbate the pressures placed on parents of intersex infants to make decisions about medical treatments, to provide their child with a legal identity.

3.5.6

Education Act No. 23 of 2011

The Zambia Education Act includes various broadly protective provisions that include and should protect the rights of intersex learners, even though the Act itself does not mention intersex persons as a specifically vulnerable group of learners. An inclusive reading and application of the Act is important to ensure that intersex learners are provided with this protection.

First, the Act provides for equity in access to education (section 31(1)) and for non-discrimination (without specifying the grounds) against all learners (section 19), which protects all learners, including intersex learners, from discrimination.

Importantly, sections 31(3) to (5) promote gender equity within education, including within the curriculum and associated teaching materials and methodologies; however, it includes reference to a binary understanding of gender, to ensure equal education opportunities for *“both male and female learners”*. Section 32 establishes the prevention of and accountability for gender-based violence at educational institutions.

The Act also provides for measures to support learners with special educational needs, including for the education board to partner with others to provide support for these learners, as well as outreach services, to reach learners whose impairments make it difficult for them to attend school (section 23).

Section 28(1) prohibits teachers from degrading or inhuman treatment against learners.

Schools in Zambia implement comprehensive sexuality education (CSE) with learners, including information about puberty, HIV prevention, gender equality, gender-based violence, SRH, relationships and human rights. The 2013 CSE curriculum includes binary definitions of gender (male and female).⁶⁴ Subsequent research in 2016 and 2019 indicated some resistance from teachers, and avoidance of certain topics in its implementation,⁶⁵ and there has been advocacy by pressure groups for its removal from the curriculum altogether. However, in 2020, the government declared its continued commitment to CSE, and a review of the CSE curriculum was commissioned by the Vice-President.⁶⁶

3.5.7

Children’s Code Act No. 12 of 2022

The Children’s Code Act, adopted by Zambia in August 2022, is a comprehensive law on the rights and protections extended to children under the age of 18 years, which—although not specifically mentioning them—by definition includes intersex children. The Act is based on the principles of the best interests of the child, including protection of the rights to life, survival and development of a child, equality and non-discrimination, participation and respect for the views of a child in all spheres of life.⁶⁷

Notably, sections 7(1) and (2) provide for non-discrimination of children on the basis of race, colour, sex, gender, age, language, political or other opinion, conscience, belief, tribe, pregnancy, health, ethnic or social origin, disability, property, birth, economic or other status, or on the basis of their parent/guardian/caregiver’s status. Intersex children should therefore be protected from discrimination on the basis of the grounds of ‘sex’ and ‘disability’, among others.

Another important provision in the Act is the right to legal identity. Section 8(1) gives children the right, from birth, to a name and nationality, and notes that when a child is deprived of that identity, the State should provide assistance to ensure the child is able to establish an identity. This provision is particularly critical for intersex infants, given the struggles experienced with birth registration.

Sections 10–12 of the Act also provide specifically for the child’s right to health, education and social welfare.

Part XII deals with children in need of care and protection; there are a number of provisions described which would extend protection to intersex children, given the kinds of rights violations they may experience. For instance, section 167(1)(h) considers a female exposed to female genital mutilation, and section 167(1)(k) considers a child exposed to gender-based violence as being in need of protection. Unfortunately, the Act confines female genital mutilation to female children, defining it as “*the cutting and removal of part or all of the female genitalia, the practice of clitoridectomy, excision, infibulation or other practice involving the removal of part or all of the entire clitoris or labia minora of a female person*”. It is important to ensure that this prohibition extends to infant intersex surgery, to prohibit all forms of genital mutilation. The protection against gender-based violence (which is defined in accordance with the Anti-Gender Based Violence Act of 2011) should extend protection to intersex children who experience violence as a result of their sex characteristics and gender. Section 167(1) (p) protects children with disabilities who are being ill-treated, and section 167(t) identifies children

64 Ministry of Education, ‘Comprehensive Sexuality Education Framework’, Curriculum Development Centre, Lusaka, 2013, <https://www.comprehensivesexualityeducation.org/wp-content/uploads/CSE-Framework.pdf>.

65 Zulu, J., Blystad, A., Haaland, M.E.S., Michelo, C., Haukanes, H. and Moland, K.M., ‘Why teach sexuality education in school? Teacher discretion in implementing CSE in rural Zambia’, *International Journal for Equity in Health* 18 (2019), article 116, <https://equityhealth.biomedcentral.com/articles/10.1186/s12939-019-1023-1>; United Nations Educational, Scientific and Cultural Organization, ‘Strengthening CSE for young people in school settings in Zambia: a review and documentation of the scale-up process’, UNESCO, Harare, 2016, <https://healtheducationresources.unesco.org/library/documents/strengthening-comprehensive-sexuality-education-young-people-school-settings>.

66 United Nations Zambia, ‘UN Press Release on Comprehensive Sexuality Education’, 6 October 2020, <https://zambia.un.org/en/94295-un-press-release-comprehensive-sexuality-education-cse>.

67 Section 4.

exposed to circumstances that may interfere with their physical, mental or social development as being in need of care and protection. All these are important protections that could be extended to protect the rights of intersex children.

As with various provisions discussed in this report, it is important to ensure that there is increased awareness of the rights violations experienced by intersex children, so that they may be identified as children in need of care and protection, where necessary, and that the provisions in the Children's Act extend protection to intersex children.

3.5.8

National jurisprudence

Zambia has little jurisprudence involving intersex persons. The case of Hellen Sibanda⁶⁸ opened up discussion in the country on the enforcement of the rights of intersex persons. In this case, the judge accepted medical evidence and ordered a change in the applicant's educational certificates to reflect 'male' rather than 'female'. Key elements of the judgment included the following:

- The court relied on medical evidence and cases from other jurisdictions in determining the sex of the applicant.
- The court held that the law should be responsive to changing circumstances and novel applications to meet the justices of the case.
- The court ordered that the education certificate should be amended from female to male.

This case is definitely a landmark case in terms of supporting access to justice by intersex people and sensitization of the judiciary and the broader public, as well as promoting respect for and the integration of intersex people in Zambian communities; it paves the way for further recognition of the rights of intersex people by the judiciary. The judges' use of female pronouns when referring to Sibanda and insistence that Sibanda's previous medical records should not be destroyed reflect an ongoing need for increasing awareness and sensitizing the judiciary of the challenges and vulnerabilities faced by intersex persons. Also, it is notable that the case did not challenge the binary categorization of persons between male and female.

68 Equal Eyes, 'Zambia: Court Okays Gender Change for Lusaka Resident', 15 November 2017, <https://equal-eyes.org/database/2017/11/15/zambia-court-okays-gender-change-for-lusaka-resident>.

EXTRACTS FROM THE CASE

“I have walked through the judicial garden in this area of the law provided by the statute. This is the first case in Zambia that has entered through the Court room doors. That is not to say that there are no people in Zambia who are similarly circumstanced like the applicant but who have not had the courage to approach the court. The reasons could be varied such as traditional beliefs, fear of ostracization among others.

It is important to note that Hellen is not seeking a sex change but is seeking to assume the correct gender as determined by irrefutable medical and scientific evidence. The applicant in the case at hand did present expert evidence from the endocrinologist, Dr. Brown Kamanga who conducted various medical examinations on her.

The documentary evidence on record reveals that she has a chromosomal make up of a man. In light of the foregoing, I come to the inescapable conclusion based on the medical evidence that the applicant is male and not female. The applicant has proved beyond a shred of doubt that she is entitled to the relief sought of being declared male and not female and I so order.

On whether or not the applicant is entitled to an order directing the Registrar General of Births and Deaths to amend the Applicant’s name, gender and or sex particulars on the Applicant’s birth record, birth certificate and national registration card to reflect the Applicant’s new details, the court stated that section 13 of the Act provides as follows: ‘The Registrar-General may, subject to any rules made under this Act, correct any error in any register, but correction shall be made without erasing the original entry and shall be authenticated by the signature of the Registrar General.’

I have no difficulty in stating that the legislature could not possibly have contemplated the scenario in the case at hand pertaining to mistaken gender identification. That notwithstanding I have scrutinized the development of the law in other jurisdictions. Turning to Hellen, the basis upon which she was enrolled was the birth certificate in the various schools which at the time reflected sex as being female. Based on this information Hellen was enrolled for examination by the various schools by Examination Council of Zambia as female. The birth certificate is due to change from female to male, in view of the order I have made. Common sense, therefore, dictates that everything that was based on that birth certificate which has since changed must also change. The law is dynamic and as a court I must be responsive to changing circumstances. I respectfully adopt the observations made by erstwhile Ngulube DCJ, (as he then was) when considering the approach to be taken in a novel matter. J19 In the case of Acropolis Bakery Ltd vs Zambia Consolidated Copper Mines Ltd which was a novel matter on liability he said: ‘We agree that the law should be responsive to changing Circumstances. In a proper case we do not see why an established principle cannot be extended to cover a novel situation we would not hesitate to do justice on the merits of the Case where new situation arises for which there is no precedent, but where it plainly appears that the legitimate rights of one person have been unfairly or wrongfully injured by another, since the recognition of those rights would presuppose the availability of remedies for their enforcement and protection.’ Underlining mine I cannot agree more with these sentiments and order that Examination Council of Zambia do change the applicant’s certificates from that of female to male gender in order to meet the justice of the case.”

3.6

Limitations in Zambia: analysis of national laws, regulations and policies

The provisions of the Constitution and of national anti-discrimination law, including disability and gender equality legislation, as well as laws and policies governing sectors such as education, health care and the workplace, do provide broad protection for the rights of all people, which includes intersex people. This protection from discrimination, including on the grounds of sex, extends protection to intersex persons and promotes their rights to equality, non-discrimination and participation. The gender equality and disability laws, in particular, provide more specific measures to potentially secure the rights of intersex persons to equality and non-discrimination in various sectors of society, including to ensure reasonable accommodation in the workplace and protection within the education sector, and to promote their access to health care, including sexual and reproductive health care. In addition, education laws and CSE provide for gender equality and protection from violence and discrimination, and health laws, policies and training programmes provide for patients' rights, including rights to medical interventions with voluntary, informed consent.

However, since Zambian laws, regulations, policies and health guidance have not had much experience with the *specific* application of these broad rights for intersex people, this protection may be inadequate in practice, since intersex persons continue to experience stigma, discrimination and institutional violence. While existing laws are certainly broad enough to provide protection, they typically do not define intersex; neither do they specifically provide for non-discrimination based on, for example, sex characteristics or traits or recognize intersex persons as a vulnerable population in need of protection. In addition, laws tend to only provide for and accommodate binary definitions of sex of 'male' and 'female'. In addition, some laws, such as the Birth and Death Registration Act, create direct challenges for intersex persons in registering their birth and requiring selection from binary sex categories, exacerbating challenges faced by parents and infants at birth.

Additionally, there is limited awareness of the rights of intersex persons and the human rights issues they face, insufficient research and evidence on the impact of laws and policies on their rights to health and development, limited access to justice for rights violations and limited jurisprudence expanding on the protections within various laws.

3.7

Comparative foreign law: Legal frameworks on protection of the rights of intersex people in South Africa, Malta, Kenya and Uganda

Finally, it is also useful to consider the promotion and protection of the rights of intersex people by analysing other jurisdictions. The assessment considers the cases of South Africa, Uganda, Kenya and Malta to learn lessons on the protection and promotion of the rights of intersex people in foreign legislative frameworks.

3.7.1

The Republic of South Africa

South Africa has made great strides towards the inclusion and ultimate recognition of intersex persons within its legislative framework, becoming the first country to explicitly include intersex people in its anti-discrimination law. The Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 of 2000, which governs the judicial interpretation of the equality clause, provides a broad categorization of grounds for non-discrimination. It was subsequently amended through the inclusion of a definition of intersex. This was operationalized through the Judicial Matters Amendments Act No. 55 of 2005, which provided that sex shall include intersex. The Act further defined intersex as "*a congenital sexual differentiation which is atypical to whatever degree*".

The Alteration of Sex Description and Sex Status Act No. 49 of 2003 similarly defines intersex in article 1 as a congenital sexual differentiation which is atypical to whatever degree. It provides for the alteration of the sexual description of certain individuals in certain circumstances and amends the Births and Deaths Registration Act No. 51 of 1992. An application under this Act is subject to submission of a medical report indicating that a person is intersex, and submission of a report from a psychologist or social worker indicating that the person has lived satisfactorily for at least two years in the gender role corresponding to the sex description under which the person seeks to be registered.^{69, 70}

Any refusal to grant the application must be accompanied by written reasons and may be appealed to the Minister of Home Affairs. Subsequent refusal may be further appealed to a court.

The Act also provides as follows in respect of the consequences of a successful application or appeal:

- A person whose sex description has been altered is deemed for all purposes to be a person of the sex description so altered as from the date of the recording of such alteration.
- Rights and obligations that have been acquired by or accrued to such a person before the alteration of his or her sex description are not adversely affected by the alteration.

3.7.2

Malta

Article 45 of the Constitution of Malta (1964) protects intersex persons from discrimination by including a prohibition of anti-discrimination on the grounds of sex, sexual orientation or gender identity, among other grounds. This provision, read together with the Equality for Men and Women Act 1 of 2003,⁷¹ provides protection against discrimination on the grounds of sex characteristics and gender expression.

The term ‘discriminatory’ in the Constitution means “*according to different treatment to different people attributed whole or mainly to their characteristics either by race, place of origin, colour, creed, sexual orientation or gender identity by according to privilege to persons of other such discrimination*”. The provisions of the Constitution are expressed in mandatory terms, meaning that the protection against discrimination on the grounds of sex cannot be derogated from.

In the Equality of Men and Women Act, discrimination means “*discrimination based on sex or because of family responsibilities, sexual orientation, age, religion, or belief, racial or ethnic origin, or gender identity, gender expression or sex characteristics and includes the treatment of a person in a less favourable manner than another person is, has been or would be treated on these grounds and ‘discriminate’ shall be construed accordingly*”.

Malta’s Gender Identity, Gender Expression and Sex Characteristics Act XI of 2015⁷² recognizes the rights to bodily autonomy, integrity and self-determination of intersex persons. The Act provides for the recognition and registration of the person’s gender and the regulatory effect of such a change, as well as protection of the person’s sex characteristics. Section 4 of the Act gives persons the ability to change their gender provided they are Maltese, providing for the self-determination of all people. When a minor wishes to change their gender, the person exercising parental responsibility may do so on their behalf, by submitting an application to the Registry of the Civil Court requesting the Court to change the gender and the first name of the child to that with which the child identifies. The best interests of the child are taken into account—in alignment with the Convention on the Rights of the Child—before such an application is brought before the Court. This is a progressive step for intersex

69 Births and Deaths Registration Act No. 51 of 1992, section 27(A).

70 Alteration of Sex Description and Sex Status Act No. 49 of 2003.

71 Cap. 456.

72 Cap. 540.

persons and in particular intersex children who may have undergone surgery or had a particular gender ascribed to them at birth.

The Act criminalizes any medical intervention on a person, such as sex reassignment surgery, without the person's consent. An intersex child may consent to medical interventions, such as surgery, once they reach a consenting age, which could be the age of majority or an age at which they are considered mature to make such a decision.

Malta's Trans, Gender Variant and Intersex Students in School Policy,⁷³ launched after the passing of the Gender Identity, Gender Expression and Sex Characteristics Act, defines intersex persons. According to this policy, an intersex person is one "who cannot be classified as male or female with regard to their chromosomal, gonadal, or anatomical sex". The aim of the policy is to foster a school environment that is inclusive, safe and free from harassment and discrimination for all the stakeholders of the school regardless of their sex, sexual orientation, gender identity, gender expression or sex characteristics. The policy acknowledges the need for advocacy on intersex issues separate from that of sexual orientation, gender identity and gender expression of other members of the LGBTI community. The policy aims to provide support to intersex children and their families by ensuring the active awareness of intersex issues. This enables the reduction of discrimination in the school system.

3.7.3

Kenya

Since the promulgation of the 2010 Kenyan Constitution, intersex matters have now made their way to the courts and are matters of public debate. The establishment of the Intersex Taskforce has supported progress on issues faced by people in the intersex community.⁷⁴

The Persons Deprived of Liberty Act No. 23 of 2014 is an Act of Parliament which gives effect to articles 29(f) and 51 of the Constitution. It is the first Act that defines an intersex person as a person certified by a competent medical practitioner as having both male and female reproductive organs. The Act therefore recognizes the status of intersex people as needing the protection of the law, especially when they are detained. Article 3 of the Act states that every person deprived of liberty is entitled to the fundamental rights and freedoms given in the Constitution.

The Act mandates an institution that detains such persons to maintain a log of the personal details of the detainee, the physical conditions in which they were held, steps taken to ensure the detained person has been subjected to due process, and the medical history of the detainee.

In the case of *R.M. v Attorney General & 4 others*,⁷⁵ the Court dealt with issues arising from the arrest and detention of an intersex person. The petitioner, convicted of robbery, sought a declaration from the Court that his status should be recognized under the Births and Deaths Registration Act.⁷⁶ He claimed he had suffered discrimination due to his status as an intersex person. He also claimed that his detention was illegal in terms of the Prisons Act,⁷⁷ as he should have been kept in a separate cell from male inmates, given his intersex status. The lack of a separate cell exposed him to inhumane and degrading treatment, thus violating his constitutional rights.

The Court stated in its judgment that the petitioner was entitled to protection against inhumane and degrading treatment, which was an absolute right limited in certain circumstances, by law. The

73 Gauci, D. (ed.), 'Trans, Gender Variant and Intersex Students in School Policy', Ministry for Education and Employment, Valletta, June 2015, <https://education.gov.mt/en/resources/Documents/Policy Documents/Trans, Gender Variant and Intersex Students in Schools Policy.pdf>.

74 Kariro, K.G., 'An analysis of the legal rights of intersex people in Kenya', Strathmore University Law School, Nairobi, 2018, p. 15, [https://su-plus.strathmore.edu/bitstream/handle/11071/6222/An Analysis of the legal rights of intersex people in Kenya.pdf?sequence=1&isAllowed=y](https://su-plus.strathmore.edu/bitstream/handle/11071/6222/An%20Analysis%20of%20the%20legal%20rights%20of%20intersex%20people%20in%20Kenya.pdf?sequence=1&isAllowed=y).

75 High Court, Kenya, *R.M. v Attorney General & 4 others* [2010], eKLR, Petition No. 705 of 2007.

76 Cap. 149.

77 Cap. 90.

petitioner was therefore awarded Ksh500,000 and 20 percent of costs, as he had succeeded in only one of the declarations he sought.

The Court stated that it was not satisfied that the genital ambiguity of the petitioner negated the fact that his biological sexual construction had already been fixed at birth. Consequently, the Births and Deaths Registration Act did not exclude the petitioner as an intersex person, as he fell within the particular sex provided for at birth.

On the other grounds sought, the Court stated that it had not been convinced that the petitioner was representing the interests of a wider intersex community, thus the suit could not qualify as public interest litigation. Accordingly, the Court identified the petitioner's intersex status as a rare phenomenon in the country and held that he would be treated as an isolated case. The case highlights the 'invisibility' of intersex persons in many societies.

In the Kenyan case of *Baby 'A' and Another v Attorney General*,⁷⁸ the petitioner gave birth to a baby with both male and female genitalia. A question mark '?' was placed in the column indicating the child's sex. The child had not been issued with a birth certificate by the time the petition had gone to Court on 24 May 2013. The first petitioner claimed that article 27(4) of the Kenyan Constitution provides that "*the State shall not discriminate directly or indirectly against any person on the grounds of race, sex, pregnancy, birth, language or ethnic and social origin*", and that the question mark offended the child's right to legal recognition, eroded the child's dignity and violated the child's right not to be subjected to inhumane and degrading treatment.

The Court highlighted in its judgment that the case brought forth the silent issues faced by intersex people, who are entitled to the fundamental rights and freedoms given in the Constitution. The relevance of this case is seen in the analysis of the judgment, which highlighted the need for a legal framework that addresses the issues faced by intersex people. The Court questioned whether Baby 'A' had suffered a lack of recognition, as the baby had not been registered as a Kenyan, nor issued with a birth certificate.

However, the Court was not convinced by the available evidence that Baby 'A' had faced discrimination, and ruled that the child's fundamental rights and freedoms had not been violated. It also refused to allow the request for the baby's birth certificate to reflect intersex status, stating that it did not have the mandate to introduce a third gender.

3.7.4 Uganda

The legislative framework in Uganda does not offer an explicit recognition of intersex as a sex category but makes provision for children born "*hermaphrodite*".

Section 38 of the Registration of Persons Act, 2015 makes provision for the updating of particulars of the child upon undergoing an operation to change from male to female or vice versa, which is certified by a medical doctor. It goes further to provide that the application tendered by the parents/guardian shall be authorized by the Executive Director of the authority.

A similar provision is contained in section 14 of the Births and Deaths Registration Act.⁷⁹ The Act also makes provision under section 13 for the change of name for a child under the age of 21 years who is unmarried, divorced, a widower or a widow.

Additionally, in 2015, the legislature issued guidelines to the Ministry of Health advising against surgical intervention for intersex infants. The guidelines stress counselling for the parents of intersex

⁷⁸ High Court, Kenya, *Baby 'A' and Another v Attorney General* [2014], eKLR, Petition No. 266 of 2013.

⁷⁹ Cap. 309.

children by specially trained counsellors, and provision for surgery only when the child is old enough and has shown more features of either sex or can decide for him/herself.⁸⁰ Despite these efforts, Ugandan nationals continue to publicly fundraise for genital reshaping surgeries locally and abroad. An expert team of paediatricians, surgeons and members of civil society has been commissioned by the Ministry of Health’s Technical Working Group on Mental and Child Health to develop a policy guideline on treating intersex patients.⁸¹

Noting the legislative advancements, a civil society report has recommended further amendments, including the inclusion of a sex-neutral marker on birth certificates, to “*ease change of sex, if necessary, when the child is old enough to be an active participant in this decision*”. Additionally, the report recommends revising the education curriculum to include information on intersex, incorporation of training on intersex in medical school curricula, and capacity-building programmes, including for traditional birth attendants, owing to the high percentage (over 50 percent) of Ugandan women who give birth under the care of traditional birth attendants rather than in hospitals. It is further recommended that parents be provided with information on intersex variations in “*antenatal clinic information packs*”, and that parents and intersex children be provided with free counselling services, diagnostic testing, and lifelong hormone replacement therapy as needed or desired.⁸²

3.7.5 Greece

On 19 July 2022, the Greek Parliament voted (almost unanimously) for articles 17–20 of Law 4958, which prohibit non-medically necessary ‘normalization’ interventions (intersex genital mutilation interventions and other medical procedures), thus protecting the physical integrity and self-determination of intersex children.⁸³ The law provides as follows:

“Article 17

Conditions for changing gender characteristics of intersex minors

1. *A minor intersex person who has reached the age of fifteen (15) may undergo medical procedures and treatments, such as surgery or hormones, for the total or partial change of gender characteristics, i.e. the chromosomal, genetic and anatomical features of the face, which include primary characteristics, such as reproductive organs, and secondary characteristics, such as muscle mass, breast or hair growth, in accordance with par. 2 of article 2 of Law 4491/2017 (A 152), only with the free consent, after being informed, of himself and of the persons exercising parental care or exercising his guardianship, according to sub-section aa) of paragraph b) of paragraph 2 of article 12 of Law 3418/2005 (A' 287), on the conditions for the provision of valid consent of a minor patient for the performance of medical procedures on him by a doctor.*
2. *A minor intersex person who has not reached the fifteenth (15th) year of age may undergo the medical procedures and treatments of par. 1, only after permission, which is granted by a decision of the Magistrate’s Court of the minor’s place of residence. The court adjudicates under the process of voluntary jurisdiction and its decision is not subject to legal remedies. The hearing procedure is conducted behind closed doors. The permission is granted by the court following: a) an opinion of the interdisciplinary committee of article*

80 Kakande, Y., ‘In Uganda, parents seek controversial genital surgery for “intersex” babies’, Thomson Reuters Foundation, 18 December 2016, <https://news.trust.org/item/20161218060443-tqfr4/>.

81 HRAPF, ‘The Impact of the Legal and Policy Framework on the Human Rights of Intersex Persons in Uganda’, HRAPF, Kampala, 2020, <https://www.hrapf.org/index.php/resources/research-reports/168-the-impact-of-the-legal-and-policy-framework-on-the-human-rights-of-intersex-persons-in-uganda/file>.

82 Ibid.

83 Intersex Greece, ‘Prohibition of intersex genital mutilation (IGM) procedures on intersex children’, 25 July 2022, <https://intersexgreece.org.gr/2022/07/25/apagorefsi-ton-epemvaseon-kanonikopoiisis-fylou-igm-sta-intersex-paidia/>.

18, which is freely evaluated by the court, b) a personal hearing of a representative of the interdisciplinary committee of article 18 and c) a personal hearing of the minor by the judge, observing the of the terms of sub. aa) of para. b) of par. 2 of article 12 of Law 3418/2005 (A 287). The license may only be granted for medical procedures or treatments that cannot be postponed until the minor reaches the age of fifteen (15) and do not cause other future, irreversible or significant complications to the minor's health . As an exception, the permission in question is not required, when the medical procedure or treatment is necessary to prevent a risk to the life or health of the minor, within the meaning of paragraphs a) and c) of paragraph 3 of article 12 of Law 3418/2005 and cannot be postponed until the court's decision is issued.”⁸⁴

The hearing process is held behind closed doors to protect the intersex child's privacy. The granting of a permit requires the opinion of an interdisciplinary committee, a hearing of the representative of the interdisciplinary committee and a hearing of the intersex minor by the judge.

84 Note that permission is not required when the medical procedure or treatment is necessary to prevent a risk to the life or health of the minor within the meaning of Law 3418/2005.

Chapter 4

Discussion and conclusions

Zambia's Constitution protects human rights and fundamental freedoms. In addition, Zambia has signed and ratified a number of international and regional treaties, committing to domesticate the human rights contained in these documents. This report shows how these human rights principles—such as the right to equality and non-discrimination on the grounds of sex and disability, and the rights to health and life, among others—provide protection to all persons, including intersex persons.

However, this report has found that, while there are limited and insufficient studies and information on the welfare of intersex people in Zambia, intersex organizations and their representatives report that intersex people face stigma, discrimination and exclusion and struggle to realize their rights, including SRHR.

Sexual health rights encompass physical, emotional, mental and social well-being in relation to sexuality, including reproductive health—including being able to control one's fertility, being free from sexual dysfunction, being free from sexual violence and female genital mutilation, having the freedom to decide what happens to one's own body, including the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence.⁸⁵ As this report has documented, SRHR, as well as other rights of intersex persons, are frequently violated due to stigma, discrimination, institutional violence and forced medical interventions throughout their life. Parents themselves lack adequate information and may be pressured or feel compelled by law to ascribe a sex and gender to a child, at a time when a child is unable to provide (or withhold) voluntary and informed consent, and this has in recent years led to serious human rights violations against children. Parents may be pressured into agreeing to unnecessary and irreversible 'normalizing' medical interventions, including to obtain identification documents for their children. Harmful practices on intersex children, whether they be in medical or other settings, may have permanent consequences for the physical and psychological health of intersex persons.

In light of the human rights violations facing intersex people, the Government of the Republic of Zambia has an obligation to take additional steps to respect, protect, promote and fulfil the rights of all people, including intersex people as a vulnerable population, in national legislation, protecting key rights and tackling human rights violations against intersex people, in law and conducive policy, in meeting their human rights commitments and ensuring that intersex persons are able to thrive and develop to their full potential.

This enhanced protection is critical; it is clear that intersex persons face ongoing discrimination and that their rights need to be defined, recognized and respected by the Government of the Republic of Zambia. The law fails to adequately protect intersex persons on paper and in their lived experiences, placing intersex persons, and the parents and guardians of intersex children, in invidious circumstances. For instance, it is important to re-emphasize that intersex persons can be women, men, non-binary or trans but have atypical characteristics that are not *cis* male and *cis* female. However, primary legislation that includes binary definitions of male and female fails to take into account those intersex persons who fall outside the binary model, and contains no explicit references to gender identity, gender expression or sex characteristics. In addition, in law and policy there is limited specific inclusion of intersex persons—for example, within anti-discrimination provisions or within categories of vulnerable populations in policy. A number of relevant laws should define and provide for intersex persons, including intersex in the interpretation of 'sex' in legislation.

Discrimination in health care should be prohibited. The Ministry of Health should develop ethical procedures and medical protocols that safeguard the lives of intersex persons, including ensuring that any unnecessary surgery, including forced sterilization, or the assignment of gender only takes place when the child is able to participate in decision-making, in the best interests of the child. The principle of participation and involvement extends to all intersex persons. The meaningful involvement of intersex persons should always form a central part of any medical decision. The involvement of

85 World Health Organization, 'Sexual Health, Human Rights and the Law', WHO, Geneva, 2015, p. 1; Committee on Economic, Social and Cultural Rights, 'General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health', United Nations, New York, 2016.

intersex persons in developing health policies and guidelines is equally critical, to protect and promote human rights.

In addition, despite the rise in the dissemination of information on intersex persons, through social media, for example, intersex people in Zambia continue to experience a lack of understanding of their status beyond a binary understanding of male or female. The negative attitude that society has towards intersex people in Zambia stems from the binary gender model, which classifies sex and gender into two different and distinct forms of masculine and feminine identities. This leads to the creation of stereotypes, resulting in marginalization and discrimination within institutional frameworks. This requires increased awareness-raising and the building of evidence and data on rights violations experienced by intersex persons.

International, regional and domestic debates on the rights of intersex people have often fallen under the broader ambit of LGBTI rights, failing to identify, recognize and support the specific human rights issues and priority concerns facing intersex persons, separate from other lesbian, gay, bisexual and transgender persons. Increased efforts to ensure the participation of intersex persons in decision-making forums and their representation on structures will help to strengthen their voice.

There are various opportunities in Zambia for further protecting and promoting the rights of intersex persons, based on law and policy reform, guided by global, regional and national human rights principles and lessons learned from comparative national legislation in various jurisdictions such as South Africa and Malta, which show the importance of, among other things, clearly defining and providing for the rights of intersex persons in both broad and specific laws and policies across various sectors (such as prisons, education and employment, for instance); prohibiting unnecessary medical interventions; allowing for changes to critical identity documents; increasing awareness of the rights of intersex persons; and strengthening access to justice for rights violations.

“We, the intersex persons demand the following:

On birth certificates, sex markers should provide for a third category called intersex besides male and female. We want to be classified as intersex because that is who we are.

When we visit health facilities, please accord us some privacy because we are not an experiment or lab rat; being seen by a team of doctors in one sitting is dehumanizing.

It is important that health personnel make all necessary information available to us as intersex persons, give us ongoing psychosocial support to help us tackle the shame that society heaps on us and make us to be part of the decision-making process regarding our treatment.”⁸⁶

⁸⁶ Focus group discussion with the Intersex Society of Zambia, 2021.

Chapter 5

Recommendations

Medical management protocols are important for the management of intersex persons. However, this report shows the need for a far broader multisectoral approach that is required by governments to manage intersex persons. Based on Zambia's current legal and policy framework and the guidance from international and regional human rights documents, as well as comparative law, the consultants would like to make the following broad recommendations to the Government of Zambia. Based on these, specific amendments may be developed, working with the Zambia Law Development Commission, relevant ministries and in consultation with key stakeholders:

- i. Develop a comprehensive and coordinated legislative and policy framework for the recognition of intersex persons in laws and policies, and to protect the rights of intersex persons, including the rights to equality and non-discrimination, to physical and mental integrity, to security of the person, autonomy and self-determination of intersex adults and children, to life, health and the right to live free from violence and cruel, inhuman and degrading treatment or punishment, including the rights of children to be free from harmful practices or forced, coerced and unnecessary medical treatment during infancy or childhood. The legal framework should also protect their rights to equal access to justice for rights violations.
- ii. Specifically, ensure that relevant laws such as the Gender Equity and Equality Act, the Employment Act, the Persons with Disabilities Act, the Children's Code Act and other relevant anti-discrimination laws and policies (e.g. in education) recognize intersex persons as a vulnerable population; include definitions of intersex persons; include expansive, non-binary interpretations of sex and/or specifically provide for non-discrimination of intersex persons, including for specific rights violations experienced by intersex persons in respective sectors (e.g., health care, employment).
- iii. Review and amend the Births and Deaths Registration Act and other relevant laws, regulations and administrative procedures to enable intersex persons to register and have access to identity documents at birth without having to fall only within binary choices of male or female (e.g. by broadening the definition of sex and/or ensuring that sex markers allow for a category of 'undetermined' or otherwise accommodate the needs of intersex persons), and ensure that persons are entitled and able to amend such official documentation without time restriction (that is, beyond two years after registration), without undue difficulty, where required. Consideration should also be given to the age at which an intersex adolescent can apply for an amendment or choose a sex descriptor independently of a parent/guardian, in alignment with a (lowered) age of consent for access to other services such as health care.
- iv. In consultation with the Ministry of Education, review the Education Act and other relevant regulations, policies and guidelines, to recognize intersex learners as a vulnerable population; broaden the definition of sex to ensure protection from discrimination for intersex learners; include intersex issues within CSE; increase awareness, training and education; take steps to reduce stigma, discrimination and harassment against intersex learners; and provide redress for harassment and abuse.
- v. Develop and review health laws and corresponding guidelines, aligned with international, regional and domestic law and policy, in consultation with stakeholders such as the Zambia Medical Association and the Intersex Society of Zambia, to include specific protections of the right to health and sexual reproductive health rights of intersex persons, including recommending among other things:
 - f. protection of the rights of intersex persons to non-discriminatory access to appropriate medical services, which should include rights-based, lifetime health-care protocols for intersex children;

- g. protection of the right to access to health information and to medical confidentiality for intersex persons;
 - h. provision for a lowered age of consent for adolescent access to sexual and reproductive health-care services;
 - i. prohibition of unnecessary, non-life-saving medical interventions on intersex persons, in the absence of prior, free and fully informed autonomous consent of the intersex person provided at a sufficiently mature age to guarantee bodily integrity, autonomy and self-determination;
 - j. provision for adequate health information and supported decision-making mechanisms for intersex adults, adolescents and their parents/legal guardians;
 - k. provision for training of health workers, including community health workers and other birth attendants (e.g. 'midwives') on intersex persons and their SRHR, including the range of sexual and related biological and physical diversity among intersex persons, health needs and available services;
 - l. provision for integrated psychosocial counselling support for intersex adults, children and their parents/guardians;
 - m. provision for maintaining a medical register of intersex persons for future follow-ups, with safeguards for the confidentiality of medical information; and
 - n. strengthened safeguards, independent oversight and accountability mechanisms to prevent rights violations and provide accountability.
- vi. Address the root causes of human rights violations against intersex persons, which include inadequate and inaccurate information, as well as harmful social and cultural gender norms and stereotypes, including beliefs about attributes required of men and women. This may include:
- a. awareness-raising, training and sensitization for the public and in specific sectors (e.g. education, employment) on the rights of all persons, including intersex persons, to equality and non-discrimination on the basis of gender identity, gender expression and sex characteristics, and the impact of harmful gender norms;
 - b. training for health-care professionals and other health-care providers, including community health workers and birth attendants, on the rights of intersex persons, communicating with and treating intersex persons in health-care settings, observing their right to life, their right to dignity and their right to medical treatment only with free and fully informed, autonomous consent; and
 - c. training for educators on the rights of intersex children and the importance of inclusive education for intersex children to prevent exclusion from education and bullying within schools on the basis of intersex status.
- vii. Strengthen access to justice, including training intersex persons on their rights, and sensitizing paralegal and legal support service providers, national human rights commission staff, judicial officers and law enforcers, to improve access to justice for intersex persons whose rights are violated.
- viii. Work with the intersex community and other stakeholders (cooperating partners, civil society organizations, community-based organizations, churches and all concerned) to:

- a. strengthen health-care services to ensure that existing health services, including sexual and reproductive health care, information and services, are available and accessible to intersex persons; and
 - b. design, develop and fully resource health strategies, plans and programmes to provide strengthened and specific health services to intersex persons.
- ix. Work with the intersex community and stakeholders, including cooperating partners, to support the development and funding of organizations representing intersex persons, and to develop mechanisms to ensure the full, inclusive, strategic and active participation of organizations of intersex persons in the design, development, implementation and monitoring and evaluation of all laws, policies and programmes that affect the lives of intersex persons in Zambia.
- x. Establish an intersex taskforce to further analyse laws, policies and institutional and administrative reforms regarding intersex persons; review relevant literature based on a comparative approach to care, treatment and protection of intersex persons; compile comprehensive data regarding the number, distribution and challenges of intersex people, including the nature and extent of rights violations they experience; identify research priorities; and make recommendations for strengthening an enabling framework to safeguard the interests of intersex persons in Zambia.
- xi. Support protection for the rights of intersex persons at the regional and international level, such as by supporting a resolution on the protections of intersex persons at the United Nations Human Rights Council and the African Commission on Human Rights and Peoples' Rights. These bodies could strengthen human rights mechanisms. The Government of Zambia should consider signing the YP+10 document. The Yogyakarta Principles are a set of principles agreed to by States on how to ensure that international law on human rights is adhered to, specifically on the grounds of sexual orientation, gender identity and sex characteristics. The government could further provide input to and support the global review of the chapter on the development of sex disorders in the International Classification of Diseases, taking place at the WHO General Assembly.⁸⁷

87 See www.yogyakarta.org.

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