



## SOGIESC FACT SHEET SERIES

# Fact Sheet 4: Being intersex in Asia Pacific

## Introduction

Intersex is an umbrella term used to describe a wide range of innate bodily variations in sex characteristics. Intersex people are born with sex characteristics that do not fit typical definitions for male or female bodies. These naturally occurring variations may involve a person's sexual anatomy, reproductive organs, hormones, and/or chromosome patterns.

The root causes of human rights violations against intersex people include harmful stereotypes, stigma, and taboos. They are also based on pathologisation - the harmful belief that intersex people and variations of sex characteristics are inherently a disorder or illness.

Some variations of sex characteristics are visible before birth or from birth, including those that are genetic or that can result in ambiguous genitalia. Some other variations of sex characteristics are not detected until later in life; for example, when a child does not progress through puberty in the same way as most other adolescents.

Between 0.05% and 1.7% of the world's population is born with a variation of sex characteristics.

## Human rights issues

Intersex people's experiences of bodily diversity are commonly shrouded in secrecy and shame, due to societal norms and medical practice that treat physical diversity as an abnormality to be fixed. This silence has enabled human rights violations to continue unchecked and has left intersex adults with little or no support for ongoing the physical and mental suffering due to surgeries and other medical interventions performed on intersex children and infants.

Intersex activists in the Asia Pacific region are part of a growing international movement that is challenging this silence. Their human rights demands are set out in the Malta Declaration, a public statement from the third international intersex forum in 2013. Intersex Asia was established in 2018 when 14 intersex people representing organisations and communities from Hong Kong (China), India, Indonesia, Myanmar, Nepal, Pakistan, Philippines, Taiwan, Thailand and Vietnam came together to attend the first Asian Intersex Forum in Thailand. At that forum, Intersex Asia released its Bangkok Statement, following the tradition of the Darlington Statement produced by intersex advocates in Australia and New Zealand in 2017.

In October 2021, more than 50 States from all regions of the world including **Australia, Fiji, India, New Zealand** and **Pakistan** from Asia Pacific called on the UN Human Rights Council to urgently protect intersex persons autonomy and their rights to health and to physical and mental integrity. These States also highlighted the "need for concrete measures to combat harmful practices, violence and discrimination based on sex characteristics".

## 1. The right to physical integrity and the associated rights to freedom from torture and ill-treatment and to live free from harmful practices

### *a) UN mechanisms*

In October 2016, ahead of international Intersex Awareness Day, a group of United Nations and international human rights experts called for an urgent end to human rights violations against intersex children and adults. They urged Governments to “prohibit harmful medical practices on intersex children, including unnecessary surgery and treatment without their informed consent, and sterilization”. These concerns have also been raised by the UN Committee against Torture, while the UN Committee on the Rights of the Child has stated such practices are discriminatory and constitute “harmful practices”. The UN Committee on the Rights of Persons with Disabilities has also expressed concern about “sex assignment” and “sex normalizing” surgeries on intersex children, including in its concluding observations on India in 2019.

In April 2015, Malta became the first country to recognise intersex people’s right to bodily integrity and physical autonomy, and outlaw non-consensual modifications to a person’s sex characteristics. Since then, a small number of countries in Europe, Uruguay in Latin America, and the **Indian state of Tamil Nadu** have introduced similar bans. The Tamil Nadu Government Order in August 2019 was in response to directions from the Madras High Court in April 2019 and bans all such bodily modifications, except in life-threatening situations.

### *b) Inappropriate psycho-social rationales*

In most countries, psycho-social rationales are frequently used to inappropriately justify surgeries and other medical interventions on intersex children. These rationales equate variations of sex characteristics, and other people’s negative reactions to those variations, as a psycho-social risk. Examples of the inappropriate use of so-called psycho-social risks include justifying medical interventions due to:

- the risk of social or cultural disadvantage to the child; for example, reduced opportunities for marriage or intimate relationships or reduced opportunity for meaningful employment and capacity to earn an income
- the risk of social isolation, restrictions or difficulties; for example, caused by embarrassment or social stigma associated with having genitalia that does not match the gender in which the person lives.

These rationale can never justify human rights violations against intersex infants and children.

### *c) Comparisons to female genital mutilation*

Intersex groups in both Australia and New Zealand have made submissions to government agencies, NHRIs and UN treaty monitoring bodies criticising laws that, while rightly prohibiting female genital mutilation, allow similar surgical interventions on intersex girls. This is despite explicit provisions stating that a procedure cannot be justified as necessary, desirable or therapeutic simply because it is part of a social, cultural or religious custom or practice.

## 2. Equality and freedom from discrimination

Intersex people frequently experience discrimination when their intersex status or sex characteristics become known or if they are perceived not to conform to gender norms. Discrimination against intersex people may involve harassment, abuse or exclusion from activities or facilities because of their bodily diversity or sex characteristics. People with variations of sex characteristics are particularly vulnerable to discrimination in circumstances when their bodies are examined or searched.

Intersex people have the same right to freedom from discrimination as other people. However, it is rare for anti-discrimination laws in this or any other region to explicitly prohibit discrimination against intersex people or to clarify that intersex people are covered under other grounds. This leaves intersex people vulnerable to discriminatory practices in a range of settings, including access to health services, education, public services, employment and sports.

In the first UN fact sheet on intersex human rights issues in 2015, the Office of the High Commissioner for Human Rights identified two priority actions to address discrimination experienced by intersex people:

- prohibit discrimination on the basis of variations of sex characteristics, characteristics or status, including in education, health care, employment, sports and access to public services, and address such discrimination through relevant anti-discrimination initiatives
- ensure that members of the judiciary, immigration officers, law enforcement, healthcare, education and other officials and personnel are trained to respect and provide equal treatment to intersex persons.

**Australia** is one of a small number of countries in the world that explicitly prohibit discrimination on the grounds of a person's sex characteristics or intersex status. In **Pakistan**, the Transgender Persons (Protection of Rights) Act 2018 includes intersex people in its definition of transgender persons. While this mistakenly conflates gender identity and sex characteristics, it does mean legal protections for transgender people against discrimination and harassment are also available to intersex people. The **New Zealand** Government has committed to amend anti-discrimination laws in 2022 to clarify that sex discrimination encompasses discrimination based on a person's sex characteristics.

### 3. The right to legal recognition

Everyone has the right to legal recognition and to obtain identity documents, including birth certificates. Legal recognition means having legal personhood and the legal protections that flow from that. It includes, for example, that intersex people who have been issued a male or a female birth certificate are able to enjoy the same legal rights as other men and women.

Some intersex people seek to amend their sex or gender details on official documents because those details were either inaccurate at birth and/or no longer reflect their sex or gender identity. In some jurisdictions these details can be corrected, when an error was made at birth. This may be the most appropriate option for some intersex people.

In some countries in Asia Pacific, male or female are not the only options on birth certificates or other official identity documents. Intersex people have the same rights as others to choose this option. However, legal recognition for intersex people is not about creating a third, separate category for the registration of people born with variations of sex characteristics. To do so would risk segregating and potentially stigmatising intersex people. It would also remove their right to determine their own sex or gender.

### 4. Effective remedies and redress

Accountability for human rights violations includes access to complaints mechanisms. To be effective in protecting the human rights of all people, NHRIs and other agencies that receive complaints need to demonstrate an understanding of the issues that intersex people face and how they are distinct from discrimination on the basis of gender identity or sexual orientation.

Accountability includes access to remedies and redress. It also requires effective monitoring and evaluation of human rights situations, particularly for marginalised groups. Given the secrecy and shame

many intersex people experience growing up, confidentiality is very important if NHRIs are seeking to research and monitor human rights violations against intersex people.

At a broader level, accountability also requires participation by intersex people and their organisations in all decision-making processes that affect their human rights. NHRIs are well placed to facilitate dialogue between intersex organisations and state actors.

## Some work by NHRIs on intersex issues

The previous APF/UNDP blended learning course has shown that NHRIs have much less knowledge and experience working on human rights issues affecting intersex people than on human rights issues relating to sexual orientation or gender identity.

The Office of the High Commission for Human Rights has specifically recommended that “national human rights bodies should research and monitor the human rights situation of intersex people”. Intersex Asia’s Bangkok statement from 2018 affirmed and extended the Malta Declaration made at the Third International Intersex Forum and calls on NHRIs to “take on board, and provide visibility to, intersex issues in their work”.

Roles played by NHRIs in this region include, for example:

- participating in the first intersex forum in **Nepal**
- receiving complaints about human rights violations by medical professionals in **India**
- examining government regulations enabling intersex people to change their title in **Thailand’s** civil registration records, in some circumstances
- advocating for an intersex man in **Indonesia** to be recognised as male, after he was detained in prison for identity fraud because his sex was assigned female at birth
- hosting roundtable discussions between health professionals and intersex people in **New Zealand** and
- undertaking in-depth research in **Australia**.

In October 2021, the Australian Human Rights Commission published a comprehensive report, *Ensuring health and bodily integrity: towards a human rights approach for people born with variations in sex characteristics*. The report makes 12 recommendations about how Australia should protect and promote the human rights of intersex people in the context of medical interventions to modify sex characteristics. The Commission has recommended legislation prohibiting such medical interventions for people under the age of 18 except in extremely limited circumstances where the intervention is required urgently to avoid serious harm.

Other NHRIs may not have looked at the experiences of intersex people directly but have relevant expertise from their work on human rights issues associated with medical interventions. For example, there may be overlaps between an NHRI’s actions against female genital mutilation or forced sterilisation of people with disabilities and the approach it would take to human rights issues faced by intersex people.

Increasingly, UN treaty bodies are asking governments to provide information on steps they are taking to prohibit forced sterilisations and non-urgent, irreversible so-called “genital normalising” surgeries on intersex infants and children.

## Key Points

- Variations of sex characteristics are relatively common and intersex people exist in all parts of the Asia Pacific region. Stigma has created an environment where intersex people’s existence and the human rights violations against them have been largely ignored.
- Intersex people often experience human rights violations because their bodies are different. These include so-called ‘sex-normalising’ surgeries or hormone treatment on infants and

children, that are medically unnecessary and typically performed when a child is too young to be involved in the decision-making process. These practices violate the right to physical integrity and have been described by human rights bodies as forms of torture or ill-treatment and as harmful practices.

- Fear and discrimination can never justify human rights abuses, including forced medical treatment. States have a duty to combat harmful stereotypes and discrimination against intersex people.
- Typically, female genital mutilation laws do not apply to surgical interventions on intersex girls. Intersex NGOs have called for so-called 'sex-normalising' surgeries on intersex children to be recognised as genital mutilation.
- Intersex people have the same rights as others to freedom from discrimination. There are very few countries in this region that have anti-discrimination laws that specifically prohibit discrimination against intersex people or that clearly state their rights protection under other prohibited grounds. This leaves intersex people vulnerable to discrimination.
- It is good practice for intersex infants to be registered as either female or male at birth with the understanding that, like all people, they may grow up to identify with a different sex or gender. However, intersex people who have been issued a male or a female birth certificate do not always enjoy the same legal rights as others.
- Some intersex people seek to amend their sex or gender details on official documents because those details were either inaccurate at birth and/or no longer reflect their sex or gender identity. Many face barriers trying to amend these details, which also undermines their right to recognition before the law. Some laws in this region only allow intersex people to change their sex details on official documents if they have had so-called 'sex-normalising' surgeries. This erases bodily diversity and undermines intersex people's human rights.
- Violations of intersex people's rights should be investigated and alleged perpetrators prosecuted. Intersex people should have access to effective remedies, including redress and compensation. They should be consulted in the development of laws and policies that impact on their rights.