

# Protecting Intersex People in Europe

## A toolkit for policy and law makers

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# CHECKLIST



*This publication has been produced with the financial support of the European Union's Rights, Equality and Citizenship Programme 2014-2020. The contents of this publication are the sole responsibility of ILGA-Europe and can in no way be taken to reflect the views of the European Commission.*

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## 1. Protecting Intersex People’s BODILY INTEGRITY

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

- prohibit any irreversible, non-emergency surgical or other interventions unless the intersex person has provided personal, free and fully informed consent
- establish adequate legal sanctions for medical professionals who conduct of any irreversible, non-emergency surgical and/or other interventions which can be deferred but are not
- establish an independent working group composed in equal measure of human rights experts, intersex peer experts, psychosocial professionals and medical experts, to review and revise treatment protocols
- establish the right to expert-sensitive<sup>1</sup> counselling with providers trained to work with intersex people
- extend the retention period for medical records to at least 40 years
- extend the statutes of limitations for surgical and/or other interventions to at least 20 years, and suspend them until the minimum age of 21 of the person concerned
- allow for surgical and/or other reversible and irreversible interventions on a mature minor, if the mature minor gives personal and fully informed consent
  - establish the presence of an independent third party to take part in the process, in order to guarantee consent principles
- establish the legal obligations for medical professionals to:
  - to inform the individual comprehensively about the treatment, including other possible medical options and details about risks and possible long-term consequences and effects, based on up-to-date medical information
  - provide detailed minutes of the consultation to the patient and their parent(s) or legal guardian(s)
- end the coverage of Intersex Genital Mutilation by the public and private health system.
- ensure that regulations and practices in public and private sectors do not bypass national protection and anti-discrimination legislation and provisions

## 2. Protecting Intersex People from Discrimination in All AREAS

- include “sex characteristics” as a protective ground in all existing and upcoming anti-discrimination legislation and provisions as well as in hate crime and hate speech legislation and provisions. The ground “sex characteristics” should:
  - be explicitly included in all equal treatment and anti-discrimination provisions and legislation
  - ensure explicit protection in the fields of employment, access to goods and services, including housing, and biased-motivated violence

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<sup>1</sup> From the text of the 2017 Maltese law, “expert-sensitive” refers simultaneously to explicit expertise coupled with sensitivity through tailored education programmes.

- ensure explicit protection against discrimination in the areas of social protection, including social security and healthcare, and social advantages and membership of and involvement in organisations of workers and employers
- ensure that the statutes of limitation take into account the length of time a victim of discrimination needs to recover from discrimination
- establish comprehensive awareness raising measures for the general public
- establish obligatory human rights-based training on intersex and intersex issues for professionals working in the areas of:
  - health including doctors, midwives, psychologists and other professionals working in the health sector (e.g. reception desk staff)
  - mental health and counselling professionals
  - education
  - law enforcement
  - elderly care
  - teachers, social workers, school psychologists and school staff
  - trade unions and work councils
  - medical officers and company physicians

### 3. HEALTH

Establish:

- the right to obtain treatment based on the individual's physical needs and are not limited by the sex/gender marker in their official documents
- the right to lifelong coverage of any medication needed as a result of surgical and/or other interventions on the sex characteristics of a person, by national health insurance reimbursement systems
- the right to access coverage for any treatments that is not limited by the sex/gender marker in a person's documents
- the right to counselling and support for all concerned individuals and their families
- the right of survivors of intersex genital mutilation (IGM) to access reparative treatment
- the right of access to medical records

Take measures to:

- ensure intersex people's and their families' psychosocial and peer support
- establish professional intersex peer counselling (i.e. peer support by trained peer counsellors)
- include intersex and intersex issues in all medical curricula and curricula in the area of health
- include positive and empowering information about the existence of intersex people in information material directed to future parents

## 4. EDUCATION

Key additional measures to protect intersex students include:

- establishing systems of support for vulnerable students, specifically including intersex students and their needs
- establishing disaggregated data collection on bullying and harassment in school environments
- establishing monitoring and evaluating tools and measurements for school inclusiveness
- including intersex people and the existence of more than two biological sexes in a positive and empowering way in school curricula, text books and education materials
- establishing school policies that
  - explicitly protect intersex students/students with a variation of sex characteristics
  - include basic facts about intersex students
  - explicitly respect the right of all students to discuss and express their gender identity and expression as well as their sex characteristics openly
  - explicitly include derogatory language into the scope of bullying
  - cover behaviour that takes place in the school, on school property, at school-sponsored functions and activities, as well as usage of electronic technology and electronic communication that occurs in the school, on school property, at school sponsored functions and activities, on school computers, networks, fora and mailing lists
  - establish low-threshold, psychological and social support mechanisms for intersex students
  - explicitly establish the entitlement of the intersex student to be provided with, on request, specific arrangements in relation to gender specific facilities such as toilets and changing rooms
  - encourage schools to designate facilities designed for use by one person at a time as accessible to all students regardless of their sex or gender, and to incorporate such single-user facilities into new construction or renovation
  - allow for all students to participate in physical education classes and sports activities, including competition sports, in a manner consistent with their gender identity
  - encourage schools to evaluate all gender-based facilities, activities, rules, policies, and practices in order to ensure that they meet equal treatment requirements
  - explicitly obligate school staff to use the name and pronoun based on the student's request, regardless of whether these have been changed in official documents
  - confirm or establish the school's obligation to change a student's official records to reflect a change in legal name or gender upon receipt of documentation that such change has been authorised

## 5. HATE CRIME AND HATE SPEECH

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

- include “sex characteristics” as a protective ground in existing hate speech and hate crime legislation and provisions
- prohibit intersexphobic speech in the media, including the Internet
- include intersex people as a vulnerable group in provisions and measures concerning the rights, support and protection of victims of crime
- monitor intersexphobic hate speech and hate crime
- create and evaluate protective measures to prevent intersexphobic hate speech and hate crimes
- evaluate existing measures in regards to intersex inclusion

## 6. GENDER MARKER REGISTRATION AT BIRTH

As long as gender markers are registered at birth, states should ensure that the existing diversity of sexes and genders is reflected in options available to register the child’s sex/gender. States should

- statutorily and before the child is born, provide parents with information about the legal options for registering their child
- make three (male, female, non-binary or equivalent) or more gender markers available when registering a child without any medical statement or diagnosis
- allow for gender-neutral names (without a stipulation for an additional gendered name)
- allow for gender-neutral family names
- allow for postponing gender registration on the birth certificate until the child is mature enough to participate in the decisionmaking process
- allow for birth certificates without a gender marker entry
- allow for parents and legal caretakers to choose M, F, X for a child’s passport, when the child was registered as non-binary (or equivalent), non-specified or without a gender marker (entry left blank or registered as “not specified”)

## 7. LEGAL GENDER RECOGNITION

Please see the comprehensive 2016 toolkit and checklist “Legal Gender Recognition in Europe” published by Transgender Europe.<sup>2</sup>

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<sup>2</sup> <https://tgeu.org/wp-content/uploads/2017/02/Toolkit16LR.pdf>

## **8. ACCESS TO JUSTICE AND REDRESS**

The *2013 Malta Declaration*, which contains the joint demands of the international intersex community, calls on states to:

- recognise that medicalisation and stigmatisation of intersex people result in significant trauma and mental health concerns
- provide adequate acknowledgement of the suffering and injustice caused to intersex people in the past
- provide adequate redress, reparation, access to justice and the right to truth.

## **9. DATA COLLECTION: addressing research gaps**

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

- Research on intersex must ask about experiences, not about identity
- Intersex people should not be researched only as a subgroup of LGBTI but as an independent part of the population; data segregation is key
- Work together with intersex-led organisations and intersex-led peer support groups
- Consult with intersex activists and organisations when creating questionnaires AND when analysing and contextualising the data

## **10. FUNDING - Creating sustainability**

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

- fund work led by intersex people
- provide flexible and stable funding to intersex organisations and groups
- provide sufficient funding for paid staff
- invest in anti-trauma work and burnout prevention
- invest in the organisational strengthening of intersex organisations and groups
- support intersex activists to build community and national-level work
- educate funding institutions and peers about intersex issues
- decrease the barriers for intersex groups in finding and applying for funding
- invest in intersex-led projects offering trainings for medical and other professionals
- invest in peer support groups, preferably those who work from a de-pathologising and human rights perspective