



Commission for Gender Equality
A society free from gender oppression and inequality

**CALL FOR INPUTS FOR THE PREPARATION OF THE REPORT OF THE HIGH
COMMISSIONER FOR RIGHTS PURSUANT TO THE HUMAN RIGHTS COUNCIL
RESOLUTION A/HRC/RES/55/14 ON COMBATING DISCRIMINATION, VIOLENCE
AND HARMFUL PRACTICES AGAINST INTERSEX PERSONS.**

Commission for Gender Equality Comments

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1. **Introduction**

The Commission for Gender Equality ('the CGE') wishes to express its gratitude for the opportunity to make written submissions on the call for inputs for the preparation of the report of the High Commission for Human Rights on combating discrimination, violence, and harmful practices against intersex persons.

The CGE, as an independent statutory body created in terms of Chapter 9 of the Constitution of the Republic of South Africa, 1996 (the Constitution), is mandated to promote and protect gender equality in government, civil society, and the private sector.

The Commission for Gender Equality Act 39 of 1996 ('the CGE Act'), gives the CGE the power to:

- Monitor and evaluate policies and practices of organs of State at any level.
- Monitor and evaluate statutory bodies and functionaries.
- Monitor public bodies and authorities and private businesses, enterprises, and institutions to promote gender equality.
- Make any recommendations that the CGE deems necessary.

The CGE welcomes the opportunity to make inputs into the UN Office of the High Commissioner for Human Rights' call for input on its report on combating discrimination, violence, and harmful practices against intersex persons.

2. **Background**

Acts of violence and harmful practices against individuals with innate variations in sex characteristics, particularly intersex persons, remain a significant concern. The CGE is currently conducting a comprehensive investigation into the

complaints it received regarding harmful practices and discrimination faced by intersex individuals in South Africa.

The complaints emanate from State facilities. There are three main categories of these complaints; the first involves intersex surgeries conducted without proper consultation, counseling, or consent, with three complaints alleging that surgeries were performed without the individuals' full consent or adherence to established procedures. The second category addresses issues related to post-surgery side effects and access to healthcare, with two complaints reporting negative outcomes following surgery and inadequate healthcare access. The final category concerns delays in surgery, where two complaints expressed frustration over prolonged waiting periods, multiple postponements, and lack of communication regarding operation dates.

To investigate the gaps, obstacles, and challenges faced by States and other stakeholders in addressing human rights violations related to individuals with innate variations in sex characteristics or intersex persons, the CGE undertook several key steps to investigate the discrimination, violence, and harmful practices in line with its mandate.

The CGE held a hearing where the complaints were presented to the National Department of Health (NDoH) to investigate each complaint. The NDoH formed a team of experts, including managers, clinicians, and legal professionals to address the complaints. The established task team developed an action plan and is in the process of investigating the complaints. The conclusion of the abovementioned investigation will provide a clear picture of the efficacy, challenges, and accessibility of healthcare services specific to intersex persons.

3. **Commission for Gender Equality's Submissions**

The complaints reveal a stark reality regarding equal access to healthcare, which remains largely unachieved. Despite constitutional guarantees for healthcare access, socio-economic status often dictates the quality and type of services individuals receive, particularly affecting intersex individuals who predominantly rely on public healthcare due to limited access to private care.

Moreover, the South African healthcare system mirrors broader socio-economic inequalities while failing to meet the specific needs of intersex persons. This situation fosters a discriminatory environment that lacks adherence to principles of bodily integrity and informed consent. The public health sector's insufficient provision of affirming medical care for intersex individuals, alongside the absence of national policy guidelines, exacerbates the challenges faced by this community. Additionally, the prevailing sex-binary framework within healthcare alienates intersex individuals and highlights a lack of awareness among public health officials.

Overall, these systemic barriers emphasize the urgent need to rectify unequal access to healthcare in South Africa, ensuring that all individuals, regardless of socio-economic status or gender identity, receive equitable access to quality and affirming healthcare services. This includes addressing acts of violence and harmful practices, such as unnecessary or deferrable medical interventions that may be irreversible and performed without full, free, and informed consent. In cases involving children, such interventions must comply with the provisions of the Convention on the Rights of the Child.

Moreover, intersex persons face exclusion in multiple and intersecting ways due to discrimination in education, healthcare, and employment. Misinformation,

stigma, and shame surrounding intersex variations contribute to this exclusion, highlighting the need for intersecting solutions that address the diverse experiences of intersex individuals.

The history of sports is filled with instances of women being banned from competition after medical testing revealed intersex traits, often based on questionable scientific justifications.¹ Some athletes have even undergone sterilization or clitoridectomies—forms of Female Genital Mutilation—to compete.² Intersex individuals are capable of achieving high levels of athletic success, yet intersex traits are disproportionately scrutinized among female athletes, while other genetic differences go unexamined, demonstrating clear discrimination.³ Support for athletes like Caster Semenya has evolved since 2009, however, sports organizations must proactively protect athletes with differences in sex development in the future, particularly considering how race and gender have influenced public perceptions and treatment.

Reports from the American Jewish World Service (AJWS), Astraea Lesbian Foundation for Justice, and Global Action for Trans Equality (GATE) highlight significant underfunding of intersex and transgender organizations.⁴ Although more than 450 transgender groups and 50 intersex groups participated in global surveys, the findings reveal that intersex and transgender initiatives

¹ de Marcilla Musté, M. G. (2022). You Ain't Woman Enough: Tracing the Policing of Intersexuality in Sports and the Clinic. *Social & Legal Studies*, 31(6), 847-870.

<https://doi.org/10.1177/09646639221086595>

² de Marcilla Musté, M. G. (2022). You Ain't Woman Enough: Tracing the Policing of Intersexuality in Sports and the Clinic. *Social & Legal Studies*, 31(6), 847-870.

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³ <https://www.womenssportsfoundation.org/wp-content/uploads/2016/08/participation-of-intersex-athletes-in-womens-sports.pdf>

⁴ Howe, E, Frazer, S, Dumont, M. and Zomorodi, G. (2017). *The State of Trans Organizing (2nd Edition): Understanding the Needs and Priorities of a Growing but Under-Resourced Movement*. New York: American Jewish World Service, Astraea Lesbian Foundation for Justice and Global Action for Trans Equality.

remain deeply under-resourced. Notably, almost no intersex groups receive funding from donor governments, and fewer than one in five have full-time paid staff. Many groups report needing support for fundraising, grant writing, and trauma recovery. The South African government and local funders should increase support for intersex organizations to enable them to continue and expand their essential work addressing human rights violations.

The urgent need for research on intersex issues is exacerbated by widespread stigma and secrecy, particularly concerning topics like infanticide. Limited studies, such as one on infanticide in the Northern Cape, struggle to secure funding for completion. As one researcher pointed out, inaction allows harmful practices to persist. Traditional healing practices should not be used to justify abuses that are fundamentally unacceptable.⁵

In educational settings, the lack of awareness and education about bodily diversity creates hostile environments for intersex youth. Bullying and ostracism are significant concerns, and there are no systems in place to ensure sustainable support for intersex students. The absence of gender, sexual, or bodily diversity in school curricula means that intersex youth often face pressure to conform to existing stereotypes. Limited non-pathologizing information can lead to invasive and unnecessary medical procedures, adversely affecting their mental and sexual health. Furthermore, intersex individuals often encounter stigmatizing language and pathologizing medical terminology, which can undermine their sense of self and contribute to anxiety and confusion about their identity.

⁵https://www.chr.up.ac.za/images/researchunits/sogie/documents/Intersex_Report/Intersex_report_Oct_Sept_2022.pdf

For instance, in 2010, a principal in Ga-Ntatelang village forced a six-year-old child with ambiguous genitalia to use the boys' bathroom, despite the child's preference for the girls one. This situation underscores the need for comprehensive curriculum reform and additional measures such as teacher training, privacy policies, and inclusive practices in schools.⁶

Regarding official documents, South Africa mandates that an infant's sex/gender be registered within a month of birth, with no provisions for intersex children. Currently, only male or female classifications are permitted, and changing this designation later is often difficult due to negligence and lack of understanding among Department of Home Affairs staff. Intersex individuals have the right to change their sex description, but this is limited to binary categories and requires living as their 'preferred' gender for two uninterrupted years—an unrealistic expectation that violates bodily autonomy and self-determination.⁷ The transition to smart ID cards, which explicitly display "M" or "F," further complicates this issue.⁸

Addressing these gaps, obstacles, and challenges faced by States and stakeholders is critical to combating human rights violations and their root causes for intersex individuals.

The root causes of intersex violations are deeply tied to societal pressures to conform to a binary understanding of sex and gender. These "normalizing" interventions—whether feminizing or masculinizing—are intended to make intersex bodies align with conventional expectations of male and female

⁶ <http://intersex.shadowreport.org/public/2016-CRC-ZA-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

⁷ The Alteration of Sex Description and Sex Status Act 49 of 2003

⁸ It is noted that the South African National Assembly has introduced the National Identification and Registration Bill, 2023 which seeks to cater for non-binary individuals who do not ordinarily fall within the male/female binary.

appearance. However, this practice is based on the flawed and exclusionary notion that there are only two valid sexes, each with a fixed and “normal” anatomical presentation. As such, this violation is not merely a medical intervention; it is an attempt to impose rigid gender norms that disregard the diversity of human bodies.

Like female genital mutilation (FGM), intersex violation is recognized as a severe human rights violation. Both practices impose irreversible changes without the informed consent of the individual affected, often resulting in lifelong physical and psychological harm. The drive behind the violation is a discriminatory assumption that deviating from binary norms constitutes a deficiency or abnormality, necessitating “correction” to fit within these restrictive gender expectations. Consequently, this practice violates the rights of bodily autonomy, dignity, and freedom from discrimination for intersex persons.

As awareness grows, calls to halt these unnecessary medical interventions are amplifying, with advocates demanding respect for intersex individuals' rights to self-determination and bodily integrity.

South Africa has implemented constitutional measures to protect transgender rights, particularly through the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000.⁹ This law aims to prevent discrimination and harassment on various grounds, including gender and sexual orientation. Notably, in the case of *Lallu v Van Staden*¹⁰, this act was applied to award damages for the violation of a transgender woman's dignity, setting a precedent for addressing harassment and unfair treatment based on gender identity.

⁹ The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA or the Equality Act, Act No. 4 of 2000)

¹⁰ *Lallu v Van Staden* Roodepoort Equality Court, Case No 3 of 2011.

Other legislation further reinforces these protections. The Civil Unions Act 17 of 2006¹¹ legalized same-sex marriage, permitting same-sex couples to adopt children, while the Alteration of Sex Description and Sex Status Act 49 of 2003 allows transgender individuals to amend their sex description in the birth register, requiring only hormone treatment as a condition for such applications.

Workplace protections are provided by the Employment Equity Act 55 of 1998, which prohibits discrimination and harassment, specifically addressing wrongful dismissal on the grounds of gender identity. This act seeks to promote equal opportunity and eliminate workplace discrimination.

Despite these legal protections, transgender individuals in South Africa face ongoing obstacles, especially in accessing healthcare services such as hormone replacement therapy and gender reassignment surgery. The National Health Act 61 of 2003 does not explicitly recognize transgender and intersex individuals as a vulnerable group; however, South Africa's National Strategic Plan on HIV, STIs, and TB 2023-2028¹² does acknowledge transgender people as a key population in need of tailored health services.

In summary, while South Africa has made progress in protecting transgender rights through various laws, practical barriers to accessing gender-affirming resources and healthcare persist. These ongoing challenges underscore the need for enhanced access to justice, remedies, and accountability for human rights violations, particularly for individuals with innate variations in sex characteristics or intersex persons.

¹¹ The Civil Union Act, 2006 (Act No. 17 of 2006)

¹² <https://knowledgehub.health.gov.za/elibrary/national-strategic-plan-hiv-tb-and-stis-2023-2028>

4. **CONCLUSION**

In conclusion, despite the progress South Africa has made in advancing transgender rights and establishing protections against discrimination, significant gaps and challenges remain for individuals with innate variations in sex characteristics, particularly intersex persons.

The lack of access to appropriate healthcare, compounded by societal pressures and legal obstacles, underscores the need for a holistic, human-rights-based approach to healthcare reform. Intersex and transgender individuals deserve the same respect for bodily autonomy, informed consent, and access to healthcare as all South Africans. There is an urgent need for policies and resources that protect intersex persons from harmful practices, uphold their right to self-determination, and recognize their unique healthcare needs. Additionally, increased support for intersex organizations and initiatives is crucial to advancing awareness, research, and advocacy.

Ultimately, addressing these barriers will require comprehensive reforms across healthcare, education, sports, and employment sectors. By doing so, South Africa can move closer to fulfilling its commitment to equality and dignity for all, ensuring that everyone, regardless of gender identity or sex characteristics, has access to justice, remedies, and the highest standard of health.