THE RIGHTS OF INTERSEX CHILDREN IN PHILIPPINES





NGO submission for the 91st session of the Child Rights
Committee

5th and 6th Periodic Review of the Philippines

Joint NGO submission by:

Intersex Philippines

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Executive summary

Intersex refers to the experiences of persons born with bodies that do not meet the normative definition of male and female. Intersex people in the Philippines are often faced with discrimination, stigmatisation and bullying and through this may struggle with access to education, employment, identity documents and marriage. Furthermore, intersex children are at risk of being subjected to non-necessary medical interventions without their prior, free and fully informed consent at an age that they are not sufficiently mature to provide consent. These treatments include medical and surgical interventions to 'normalize' the external genitalia of these intersex children. Access to healthcare and medicines is also one of the foremost challenges faced by intersex children in Philippines. Therefore, Intersex children in the Philippines seek protection under Articles 2, 6, 16, 19, and 24 of the Convention on the Rights of the Child (CRC) and General Comments no. 13, 15, and 18 of the Convention.

Key words

Prior, free and fully informed autonomous consent, intersex, sex diversity, sex registration, healthcare, psychological integrity, physical integrity, rights of the child, self-determination, sex characteristics

I. Introduction

- 1. This NGO report has been jointly prepared by Intersex Philippines and Intersex Asia with a view to inform the Committee on Rights of the Child about the human rights violations faced by intersex children in the Philippines. The two organisations would urge the Committee to raise these issues during the dialogue with the State Party during the 91st Session of CRC in which the 5th and 6th Periodic Report will be considered.
- 2. This report discusses how intersex relates to the Convention, and recent policy and legal developments in Philippines. Followed by a discussion of human rights violations against intersex people under the Convention on the Rights of the Child and introduces suggestions for improvements and recommendations to the State Party.

II. Intersex and the Convention on the Rights of the Child

- 3. Intersex children in the Philippines seek protection under Articles 2, 6, 16, 19, and 24 of the Convention on the Rights of the Child (CRC) and General Comments no. 13, 15, and 18 of the Convention.
- 4. Intersex refers to the experiences of persons born with bodies that do not meet the normative definition of male and female.
- 5. The Convention on the Rights of the Child (CRC) contains a number of articles relevant to protecting the human rights of children with congenital variations in sex characteristics in medical settings. These include obligations on States Parties to:
 - ensure the best interests of the child is a primary consideration in all actions concerning children (Art 3(1))
 - ensure the survival and development of the child (Art 6(2))
 - respect the right of the child to preserve his or her identity (Art 8(1))
 - assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child (Art 12(1))
 - take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (Art 19)
 - take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children (Art 24(3))

• recognise the right of the child to the enjoyment of the highest attainable standard of health (Art 24(1)).

The Committee on the Rights of the Child has repeatedly called on States Parties to better protect the human rights of children with congenital variations in sex characteristics in the context of medical interventions. In its General Comment No. 20, on the rights of the child during adolescence, it stated: The Committee emphasizes the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy. It condemns the imposition of so-called "treatments" to try to change sexual orientation and forced surgeries or treatments on intersex adolescents. It urges States to eliminate such practices...¹

The country reports of the Committee on the Rights of the Child consistently recognize FGM as a harmful traditional practice that is against the best interests of the child and repeatedly call for its elimination. (See: Concluding Observations of the Committee on the Rights of the Child: Ethiopia (1997), (Para. 6); Concluding Observations of the Committee on the Rights of the Child: Sudan (1993), (Para. 13); Concluding Observations of the Committee on the Rights of the Child: Togo (1997), (Para. 24))

III. Legal and Policy regime in Philippines

- 6. The Philippines signed and ratified various international human rights instruments. Meanwhile, the 1987 Philippine Constitution (Article 2, Sections 11 and 15, and Article 3 Section 1) upholds the dignity, equality and human rights, and right to health of all persons.
- 7. Intersex people in the country also face similar challenges when it comes to recognition of legal gender in identity documents. Since birth, intersex children are given names based on binary understanding of their gender and sexuality. In this regard, it is instructive for the government to enact a law complying with the ruling of the Supreme Court of the Philippines in the case of *Republic of the Philippines v. Jennifer Cagandahan*. Recognizing the existence of intersex people, the Supreme Court said: "The current state of Philippine statutes apparently compels that a person be classified either as a male or as a female, but this Court is not controlled by mere appearances when nature itself fundamentally negates such rigid classification."

¹ Committee on the Rights of the Child, General Comment No 20 (2016) on the implementation of the rights of the child during adolescence, UN Doc CRC/C/GC/20 (6 December 2016) [34].

- 8. Meanwhile, the country lacks prohibiting discrimination on the basis of sex characterstics and ensuring the provision of adequate services for intersex people. Last year, the House Committee on Human Rights started discussing the scope of the pro-posed "comprehensive" anti-discrimination law. While the legislation was not adopted eventually, the draft law did not include 'intersex' within the definition of 'sex'. Had the panel chosen to include "intersex" in the definition of "sex", it would have paved the way for legal recognition of intersex people in the country. The move would have also backed the 2008 Supreme Court decision that biological parameters cannot be neatly divided into two categories of men and women.
- 9. The Anti-Bullying Act of 2013 (Republic Act No. 10627) and Department of Education Order No. 40 (DepEd Child Protection Policy) guarantees the protection of children in schools from any form of violence, abuse, discrimination or exploitation. However, the law doesn't include 'sex characterstics' as a protected ground.

IV. Discrimination against intersex children

- 10. In spite of the guarantee of protection of dignity, equality and human rights, and right to health of all persons in the Constitution of Philippines, people encounter discrimination, bullving intersex often stigmatisation. There are no specific anti-discrimination laws for intersex people as exist for other minorities. These practices are a violation of Article 2 of the Convention, as it falls under discrimination on the basis of sex. Article 24.2(f), as explicated in General Comment no. 15 article 67 and 68 specifically requires guidance for parents and recognizes parents as the most important source of early diagnosis and primary care for small children. Furthermore, Article 19 requires State parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.
- 11. The emancipation of intersex persons in Philippines will require the involvement of organisations that represent intersex people. However, these organisations are often entirely self-funded. The NGO's recommend the State Party allocate financial resources to support organisations representing intersex persons, and develop mechanisms to ensure the full, inclusive, strategic and active involvement participation of organisations of intersex persons in the planning and implementation of all legislation and measures that affect the lives of intersex persons.

 $^{^{2}}$ Xave Gregorio, "'Intersex' excluded from definition of sex in draft anti-discrimination bill" (The PhilStar Global, May 11, 2021), available at

 $[\]frac{https://www.philstar.com/headlines/2021/05/11/2097461/intersex-excluded-definition-sex-draft-anti-discrimination-bill}{}$

- 12. Intersex Philippines has received reports that intersex people in the Philippines face issues receiving education and finding employment due to bullying. The Anti-Bullying Act of 2013 has been woefully ineffective in protecting children from bullying in school. In this regard, Jeff Cagandahan (co-founder of Intersex Philippines) in a public interview said: "I found it difficult to wear skirts just because I was assigned female at birth. It was difficult to act as a woman just because I was given a female name at birth. Because I identified as a man, it was hard to live as a woman. I thought and felt as a man, so there was a disconnect."³
- 13. Members of Intersex Philippines have recounted their experience of facing stigma and discrimination on several public platforms since there is no institutional mechanism to address their concerns.⁴
- 14. The NGO's recommend that the State Party develops a comprehensive and coordinated legislative and policy framework for inclusive education and employment and conduct awareness-raising campaigns aimed at the general public, schools and the families of persons with intersex. In 2015, CRC found cases of extreme bullying of intersex children preventing them from attending school to constitute a harmful practice in violation of art. 24(3) during its review of Switzerland.
- 15. Legal recognition of sex at birth is one of the first issues which influences parents and doctors to assign sex/gender to the child for the purpose of obtain birth registration certificate. While sex/gender classification is important, the significance of this issue is limited. Sex/gender category should not be a rigid element of the legal identity registration process. As mentioned in the Malta Declaration, the legal gender registration process must be designed "with the awareness that, like all people, they [intersex infants and children] may grow up to identify with a different sex or gender." At a later stage, there should be mechanisms which allow for changing the sex/gender marker through a simple administrative procedure as per the request of the individual. Legal jurisprudence coming from constitutional courts has affirmed the right to self-determine sex/gender marker in identity documents.
- 16. Intersex Philippines (the only intersex-led organisation in the country) has received reports that some intersex persons experience difficulties in obtaining identity documents or get the gender markers changed in their

³ Michael David dela Cruz Tan "Intersex Pride" (Outrage Magazine, December 19, 2019) https://outragemag.com/intersex-pride/

⁴ Albert Bofill, Marypaul Jostol, Joaquin Luna, 'Out of the shadows: The fight for intersex inclusion' (The Lasallian, 20 June 2021)

 $[\]underline{https://thelasallian.com/2021/06/20/out-of-the-shadows-the-fight-for-intersex-inclusion/}$

- identity document due to the absence of legislation regarding legal gender recognition.
- 17. Contrast this situation with laws in South Africa and Germany which allow for flexibilities in the system and accord intersex people with the right to change their sex/gender marker in identity documents like birth certificates. In this regard, it is important to take note of Germany's Civil Status Law, 2007 which says: "If the child can be assigned neither the female nor the male gender, that person's civil status shall be documented in the birth register without indicating the person's gender."
- 18. The NGOs recommend that the State Party enact a specific legislation which prescribes a simple administrative mechanism to change the gender marker in identity documents.

V. Harmful practices in health care

- 19. As a solution to the issues faced by intersex persons, several hospitals offer medical treatment aimed at fitting the bodies of intersex children within the normative definition of male and female. This type of health care for intersex children is based on 'predict and control': when an intersex child is born, health professionals try to predict the future gender of the child and control the outcome of this prediction by means of medically unnecessary and irreversible surgery, treatment with hormones, other normalising treatments and psychological support, without the prior, free and fully informed autonomous consent of the child. In some cases, these decisions are made in conference with the wishes of the parents. This predict and control method is a violation of the right of self-determination of the child and of the right to the highest attainable standard of physical and mental health. The term 'predict' is misleading, as it is very uncertain at the young age in which surgery is oftentimes conducted, how the identity of the child will develop in the future.
- 20. These practices are in violation of Article 24 of the Convention which recognizes the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. Additionally, these practices fall under the criteria of harmful practices, as described in General Comment no. 18, Articles 15 and 16. GC 18 Art. 15 states: 'Harmful practices are persistent practices and forms of behavior that are grounded in discrimination on the basis of, among other things, sex.' GC 18 Art. 16 (d) states: "They are imposed on women and children by family members, community members or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent."
- 21. The consequences are comparable to the effects of female genital mutilation as described in CRC-CEDAW Joint General Comment no. 18, art. 19, which describes amongst others, severe pain, infections, long-term

gynecological problems such as fistula, psychological effects and death. Furthermore, these practices are contrary to Article 16 of the Convention on the right to privacy. The CRC-CEDAW Joint General Comment/Recommendation No. 18/31 "on harmful practices" "call[s] upon States parties to explicitly prohibit by law and adequately sanction or criminalize harmful practices, in accordance with the gravity of the offence and harm caused, provide for means of prevention, protection, recovery, reintegration and redress for victims and combat impunity for harmful practices" (para 13).

- 22. In 2013, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment called on states to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalising surgery, involuntary sterilisation, "reparative therapies" or "conversion therapies", when enforced or administered without the free and informed consent of the person concerned. He also called upon them to outlaw forced or coerced sterilisation in all circumstances.⁵
- 23. Health professionals often believe that sex assignment through medical and surgical intervention of intersex children is not an issue.⁶ However, recent European research has shown that five per cent of **all** intersex children change their assigned gender, including those with forms of sex diversity that are usually not recognized at birth. In about 80% of those cases, the shift occurs before puberty.⁷
- 24. It is impossible to predict which of the children will belong to the group that will reject the assigned sex. Therefore, 'normalising treatment' is a violation of all intersex children. Parents may not realise that they are de facto opting for experimental treatment for their children. The NGO's therefore highly recommend the government to protect children against unproven and unscientific medical treatments.
- 25. Consequences of surgical and medical interventions can be severe and irreversible: unnecessary surgery at a young age often leads to lifelong physical and mental health issues due to the irreversible character. When

⁵ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Medez, Human Rights Council, 1 February 2013 (A/HRC/22/53).

⁶ E.g.: "For physicians it is obvious and unequivocal that a person with CAH and an XX karyotype has a female gender identity," **Binet A, Lardy H, Geslin D, Francois-Fiquet C, Poli-Merol ML.** Should we question early feminizing genitoplasty for patients with congenital adrenal hyperplasia and XX karyotype? Journal of Pediatric Surgery. 2016;51(3):465-468.

⁷ Falhammar H, Claahsen-van der Grinten HL, Reisch N, Slowikowska-Hilczer J, Nordenstrom A, Roehle R, et al. Health status in 1040 adults with disorders of sex development (DSD): a European multicenter study. Endocrine Connections. 2018. (https://doi.org/10.1530/ec-18-0031).

⁸ **Liao L-M, Wood D, Creighton SM.** Parental choice on normalising cosmetic genital surgery. BMJ. 2015;351.

⁹ Falhammar H, Claahsen-van der Grinten HL, Reisch N, Slowikowska-Hilczer J, Nordenstrom A, Roehle R, et al. Health status in 1040 adults with disorders of sex

children grow older, and their identity becomes clear, they might be confronted with a body that goes contrary to their identity, as a consequence of medical interventions. They will never be able to alter this. Therefore, it is not surprising that the recent European intersex study mentioned above showed that the number of participants with psychological problems is 4.3 times higher than in the control group and that the number of participants who attempted suicide is 3.5 times higher than in the control group. Moreover, the researchers state that in reality the percentage of suicide attempts might be higher because a significant number of respondents refused to answer the question about suicide. 10 Intersex Philippines has received reports of several intersex individuals suffering life-long ill effects of such surgeries. In a media report that came out recently, the discussion on an intersex child exposed the current understanding of the status of intersex children within medical professionals. Even experts in the media panel were using pathologizing terms such as 'hermaphrodite' to characterise the status of the child.

26. It is unknown whether psychological problems and mental health issues are symptoms of the DSD diagnoses (DSD stands for Disorders of Sex Development, the medical term used for intersex people). Percentages for mental health issues and suicide attempts are also greatly increased in sexually abused children. Some medical treatments and studies (including a test described as 'clitoral sensory testing and vibratory sensory testing'12) for intersex children can be classified as sexual abuse.

development (DSD): a European multicenter study. Endocrine Connections. 2018. (https://doi.org/10.1530/ec-18-0031).

¹⁰ Falhammar H, Claahsen-van der Grinten HL, Reisch N, Slowikowska-Hilczer J, Nordenstrom A, Roehle R, et al. Health status in 1040 adults with disorders of sex development (DSD): a European multicenter study. Endocrine Connections. 2018. https://doi.org/10.1530/ec-18-0031.

Psychological Bulletin. 1986;99(1):66. https://doi.org/10.1037//0033-2909.99.1.66. 4. Cook A, Spinazzola J, Ford J, Lanktree C, Blaustein M, Cloitre M, et al. Complex trauma in children and adolescents. Psychiatric annals. 2005;35(5):390-398. https://doi.org/10.3928/00485713-20050501-05.

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¹² **Yang J, Felsen D, Poppas DP**. Nerve sparing ventral clitoroplasty: analysis of clitoral sensitivity and viability. The Journal of urology. 2007;178(4):1598-1601. https://doi.org/10.1016/j.juro.2007.05.097

¹³ **Alexander T**. The Medical Management of Intersexed Children: An Analogue for Childhood Sexual Abuse Rohnert Park, CA, USA: Intersex Society of North America; 1997. URL: http://www.isna.org/articles/analog.

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Scientists and agencies consider the medical treatment undergone by a group of intersex children to be comparable to Female Genital Mutilation (FGM).¹⁴ A growing number of intersex people claim to have experienced medical attention as (sexual) abuse.¹⁵ All this research suggests that medical attention is likely the cause, and not the diagnosis itself. The NGO's recommend the State Party prohibits and criminalises the practice of non-necessary medical interventions on intersex persons, in the absence of prior, free and fully informed autonomous consent provided at a sufficiently mature age to guarantee bodily integrity, autonomy and self-determination to the children concerned and that supported decision-making mechanisms and strengthened safeguards are provided. It also recommends that the State party raise awareness of such practices as harmful.

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¹⁴ **Dreger AD**. "Ambiguous Sex"—or Ambivalent Medicine?: Ethical Issues in the Treatment of Intersexuality. Hastings Center Report. 1998;28(3):24-35. https://doi.org/10.2307/3528648.

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¹⁵ **Blair K**. When Doctors Get It Wrong. Narrative Inquiry in Bioethics. 2015;5(2):89-92. https://doi.org/10.1353/nib.2015.0029.

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Viloria H. Born both: an intersex life. New York, NY, USA: Hachette Books; 2017.

- 27. Medical staff is often insufficiently trained in intersex matters, which leads to difficulties for intersex persons in accessing health care and with being treated respectfully. Health professionals in mainstream health services should be trained in communicating with and treating intersex persons in health-care settings, observing the right to prior, free and fully informed autonomous consent and other rights enshrined in the Convention.
- 28. In August 2022, the Department of Health came out with a notification declaring Congenital Adrenal Hyperplasia (CAH) to be a rare disease. Such a declaration has the potential to further stigmatise the intersex people.
- 29. Even though CAH has been classified as a rare disease, the government has not taken any steps towards procuring sufficient medicines for the health needs of intersex infants with CAH. Last year, the situation was so dire that Nelson Ancajas- father of an intersex child with CAH contested in the election just to raise awareness on this issue.¹⁶

VI. Suggested Recommendations

The NGO's respectfully request the Committee on the Rights of the Child to make the following recommendations to the Philippines:

- a) Prohibit and criminalise the practice of non-necessary medical interventions on intersex persons, in the absence of prior, free and fully informed autonomous consent provided at a sufficiently mature age to guarantee bodily integrity, autonomy and self-determination and that supported decision-making mechanisms and strengthened safeguards are provided. Also, raise awareness of such practices as harmful, ensures the training of relevant professionals, and provide families with intersex children with adequate counselling and support.
- **b)** Establish measures to guarantee the right to life of intersex children and ensure equal access to justice and to safeguard intersex children from abuse, ill-treatment, sexual violence and exploitation.
- c) Adopt plans and allocate resources to ensure that mainstream health services, including sexual and reproductive health services and information, are accessible to intersex persons. Health professionals in mainstream health services should be trained in communicating with and treating intersex children in health-care settings, observing the right to prior, free and fully informed autonomous consent and other rights enshrined in the Convention.
- **d)** Develop a comprehensive and coordinated legislative and policy framework for inclusive education that ensures teachers and all other professionals and persons in contact with children understand the

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¹⁶ Dwight De Leon, 'Desperate father uses COC filing stage to seek help for ill child' (Rappler, 7 August 2021) https://www.rappler.com/nation/elections/desperate-father-uses-coc-filing-stage-ask-help-ill-child-october-2021/

concept of inclusion and are able to enhance inclusive education for intersex children to prevent exclusion from education on the basis of intersex. Also, conduct awareness-raising campaigns aimed at education and employment to the general public, schools and the families of persons with intersex.

- **e)** Enact a suitable legislation which ensures that intersex children can exercise the right to have their sex/gender marker changed after a simple administrative procedure.
- f) Allocate financial resources to support organisations representing intersex persons, and develop mechanisms to ensure the full, inclusive, strategic and active participation of organisations of intersex persons in the planning and implementation of all legislation and measures that affect the lives of intersex persons.