



THE IMPACT OF THE LEGAL AND POLICY FRAMEWORK ON THE HUMAN RIGHTS OF INTERSEX PERSONS IN UGANDA



SIPD Uganda



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Research Brief

2020

A publication of:

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1. INTRODUCTION

An intersex person is someone with an atypical reproductive and sexual system. The body and reproductive organs of an intersex person cannot be typified as either 'male' or 'female' according to the definition and standards of society. Intersex characteristics can manifest in a very broad variety of ways. It is possible for an inconsistency to occur between the internal and external sexual anatomy of an intersex person. In some cases, an intersex person's genitalia will be neither clearly male nor female. Some intersex conditions may only become apparent when a child reaches puberty. About 0.05% - 1.7% of the world's population are born with intersex characteristics. This number cannot be pinned down more accurately due to the differences in parameters within which 'intersexuality' as defined by different medical experts.

Globally, intersex persons are subject to discrimination in various spheres of life, including access to education, healthcare, employment and housing. The three major human rights concerns affecting intersex persons globally are: prejudice and discrimination, subjection to unnecessary medical surgery and legal recognition. The actual experiences of intersex persons in the Ugandan context, and the extent of violations which they would typically suffer, have not been documented in depth in Uganda.

HRAPF and SIPD have therefore partnered to investigate the impact of the legal framework on the human rights of intersex persons in Uganda. The study seeks to consider which human rights concerns intersex people in Uganda face and how these concerns can be addressed.

The study was qualitative in nature. Secondary data was collected on the legal and policy framework on the protection of intersex persons in Uganda, Uganda's domestic laws and policies, as well as data on three other countries which protects the rights of intersex persons in a progressive way namely Kenya and South Africa (Africa) as well as Malta (Southern European Island).

Primary data was collected through In-Depth Interviews (IDIs) with intersex adults and parents of intersex children, and Key Informant Interviews with key actors in this field. IDIs were done with 12 intersex individuals and 8 parents of intersex children in Gulu, in the Northern Region of Uganda; Tororo in the Western Region and Masaka and Mukono in the Central Region. A total of 14 KIIs were held with policy-makers, government officials, civil society representatives and representatives of schools and hospitals. Two District Health Officers, one Officer in Charge of a Police Station and one principal of a school attended by an intersex child were interviewed. Furthermore in-depth interviews were held with

representatives of the Uganda Human Rights Commission (UHRC); the National Identification and Registration Authority (NIRA); the Human Rights and Legal Affairs Directorate in the Uganda Police Force; the Ministry of Health (MoH), the Ministry of Gender, Labour and Social Development (MGLSD) and the Ministry of Education and Sports (MoES). A representative of MARPI Mulago was interviewed as well as a project officer of World Vision Uganda.



2. KEY FINDINGS

2.1 Uganda's legal and policy framework does not generally recognise intersex persons and their unique challenges

Uganda has ratified a number of international and regional human rights instruments, which unfortunately do not address intersex rights directly, but a number of whose provisions have bearing on intersex persons' rights. However, treaty bodies have made specific observations and recommendations in respect of the rights of intersex persons.

The Constitution of Uganda requires the state to fulfil the fundamental rights of Ugandans to social justice and economic development and provision of basic medical services. The Constitution provides for equality and protection before the law for all persons; the right to be free from torture and cruel, inhuman and degrading treatment or punishment; the right to privacy, and the right to liberty of all persons, affirmative action measures in favour of marginalised groups and children's rights.

Uganda has adopted the Registration of Persons Act, 2015 which allows both children and adults to change their names. The Act also allows the parents of 'hermaphrodites' to apply to have the details of an intersex child changed in the birth register if the child had undergone surgery to

change their sex, and their parents or guardians have made an application as required. Unfortunately the law uses pejorative language and also links the availability of changing one's particulars in the birth register to undergoing surgical procedures during childhood and a similar procedure is not available for adults who wish to change their details in the birth register.

In Uganda, there is no specific law or policy, which guides police and prison officials on how intersex persons should be treated in detention. The National Orphans and Other Vulnerable Children Policy (2003) has a specific focus on the most vulnerable children and it arguably applies to intersex children though they are not explicitly mentioned. The Children Act Cap 59 and The Education (Pre-Primary, Primary and Post-Primary) Act, 2013 are largely protective of children though it does not expressly recognise intersex children.

Currently, there is no policy on treatment of intersex patients. 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.

This legal and policy invisibility leaves intersex persons without legal recognition, and therefore without legal protection. This invisibility feeds into the lack of awareness on the existence and challenges of intersex persons in Uganda. Lack of awareness was cited over and over again as the major cause of challenges for intersex persons in Uganda. Where there is no awareness, there can be no policy. Where there is no policy, there can be no law, guideline or programme specifically designed to address the challenges that intersex persons face. Accordingly, both children and adults face the violation of their rights in Uganda.

2.2 Legal and policy invisibility impacts on the rights of intersex persons

2.2.1 Violation of intersex children's rights

Intersex children face the greatest extent of human rights violations that can be attributed to the legal and policy framework. The rights violated are:

a) The right to education

Exclusion from education is a major issue among intersex persons in Uganda. Almost every intersex person interviewed shared that they experienced discrimination or bullying at school due to the fact that they are intersex. Many decided to leave school to escape the ridicule.

There is largely no recourse for them as they are not specifically provided for and few teachers are trained to handle such cases.

'And another challenge, during my studying time from S.1 to S.4 I had those breasts. So it was a challenge to me, to boys, my fellow boys bathing with them so they could laugh at me. That was a very big challenge for me. And I reached that stage and I could ask myself why God, will I be like a normal man because they could laugh at me and I feel I was segregated.' *Intersex person interviewed in Mukono, 26th October 2018.*

b) The right to health.

The state does not provide for specialised treatment for intersex conditions. The hospitals capable of providing treatment to intersex children lack sufficient funding. There is a lack of expertise and understanding of intersex conditions among general medical practitioners, especially in rural areas.

'We do not have specific programs for that because it is a very ... rare condition ... we wouldn't discriminate such a child, we would imagine that

that child fits into our system - referral system because when we get a child like that we consider that as a unique case which should be referred to either a regional referral hospital or a national referral facility for support because we do not have specialists in the district to handle childhood sort of variations or abnormalities.' *Interview with District Health Officer, Buikwe District, 26th October 2018.*

c) The child's right to be cared for by parents

Intersex children experience discrimination at the family and community level. Mothers abandon their newborn babies or fathers abandon both the mother and intersex baby. Intersex children are also excluded from inheriting communal and family land.

I have no support whatsoever from relatives and the reason for that is because of land wrangles. They wanted to chase us off the kibanja. The family members are all against me and the fact that I have an intersex child so it even exaggerates the situation. *Interview with parent of intersex child, Masaka, 24th October 2018.*

d) The child's right to freedom from inhuman and degrading treatment

Intersex infants and children are subjected into invasive and irreversible surgeries without their consent. In one case a young intersex child had undergone cosmetic surgery which, was not medically necessary. The outcome of that case was that the penile reconstruction failed and the child was left in a situation where his body is constantly discharging puss with a strong smell. *Interview with parent of intersex child in Tororo, 9th October 2018.*

2.2.2 Violation of intersex adults' rights

a) Lack of legal recognition

Currently, the law does not recognise a third gender and intersex adults do not have a mechanism to their disposal to change their particulars in the births register. This poses challenges for them.

b) Discrimination in employment

Intersex persons reported difficulties in finding and maintaining employment due to the stigma created around them by society. This would be structural rather than direct discrimination.

c) Freedom from inhuman and degrading treatment

In police and prisons custody, specific provision is not made for adult intersex persons and they are detained in cells where they could be at risk of suffering sexual abuse. HRAPF's legal aid clinic has dealt with a case of an intersex person who was accused of murder and was placed on remand along with male prisoners. The client reported that he suffered ridicule by other prisoners while in detention, and he was not asked which cell he preferred to be incarcerated in. (Interview with representative of Human Rights Awareness and Promotion Forum, Kampala, 28th January 2019).

3. CONCLUSION

Uganda is placed within a progressive regional and international framework as far as intersex rights are concerned and has ratified various human rights instruments that have provisions that speak to the rights and concerns of intersex persons. Uganda does not have a clear law or policy to guide educators on how to accommodate intersex students, nor are there specific policy provisions that addresses the medical needs and concerns of intersex persons or medical protocols to protect them from medically unnecessary surgeries performed without their informed consent. Uganda's laws do not prohibit discrimination on the basis of sex characteristics.

In terms of impact of the legal and policy regime, the study finds that intersex persons face severe stigma at family and community level which threatens their right to life. Intersex persons find major challenges in exercising their right to education due to the fact that they can easily fall subject to ridicule in a school-setting and educators do not have clear guidance on how to accommodate intersex students. Intersex persons also suffer the violation of their right to health in that medical practitioners in smaller health facilities are not well-versed with their medical concerns. While there are hospitals within Uganda and its neighbouring countries that can perform both medically

necessary and cosmetic surgeries on intersex persons, many intersex persons nevertheless face a financial barrier which prevents them from accessing the surgeries they require. Intersex persons also face discrimination in legal recognition in that only minors who have undergone surgical procedures to alter their sex are able to apply for an alteration of their particulars in the births register. Intersex persons also risk the abuse of their rights while in custody since there is no clear guideline to law enforcement officials on how to handle cases of incarceration of intersex persons.

The invisibility of intersexuality in the laws and policies is the biggest cause of the violations. The state of Uganda, by failing to put in place laws that protect intersex people against violation and discrimination, fails in its obligations to protect, fulfil and to respect the rights of such persons. Considering that intersex children's rights are mostly violated, the state cannot argue limited resources as protection of such vulnerable persons from discrimination and violation is part of the minimum core package for social-economic rights. Unregulated medical practices upon such children are also a big issue leading to a violation of their right to freedom from inhuman and degrading treatment.

4. RECOMMENDATIONS

The study makes the following recommendations:

To Parliament

Amend section 38 of the Registration of Persons Act, 2015 to allow intersex adults to also change their particulars in the births register if they wish and replace the term 'hermaphrodite' with intersex.

To the Ministry of Gender, Labour and Social Development

Include intersex children in the review of the National Policy on Orphans and Other Vulnerable Children.

To the Ministry of Education and Sports

- Include intersex children within education policies in Uganda as vulnerable children.
- Protect intersex children from discrimination based on sex.
- Sensitise teachers on intersexuality and how to prevent and deal with bullying against intersex children

To the Ministry of Health

- Adopt a protocol which stops surgeons from performing medically unnecessary surgeries on intersex children and infants without their free, full and informed consent.
- Allocate a portion of the Ministry's budget toward subsidising surgeries and hormone treatment for intersex persons.
- Train medical practitioners on how to treat intersex patients.
- Sensitise health workers on how to protect the privacy and dignity of intersex patients.

To the Uganda Police Force

- Adopt guidelines to instruct station commanders on how to handle cases of intersex arrestees. Such guidelines could include to detain intersex persons in separate facilities or to release them on police bond.
- Continue training and awareness-raising among police officers of different ranks in all regions of the country.

To the Equal Opportunities Commission

- Monitor and investigate the situation of intersex persons.
- Include intersex people's issues in the annual reports to Parliament.

To the Uganda Human Rights Commission

- Investigate and monitor human rights abuses committed against intersex persons.
- Include intersex issues in the annual reports to Parliament.

To mainstream civil society organisations

- Deliberately target intersex persons in programming

To intersex persons and organisations working on intersex persons

- Undertake advocacy campaigns to raise awareness about the existence of intersex persons in Uganda and their particular human rights concerns.
- Join/identify support groups and reach out to other intersex persons and parents of intersex children in order to overcome isolation and secrecy.

- Participate in the development of policy and adoption of laws, which potentially affect intersex persons or could better ensure the realisation of their rights.

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