

Policy Brief: Adoption of gender marker and medical surgeries guidelines for Intersex persons in Zimbabwe.

Definition of Key Terms

***Intersex persons** are persons born with sex characteristics, sexual anatomy, reproductive organs, hormonal and genetic material (chromosomal patterns) that do not fit the typical binary classification of male or female bodies.¹*

***Binary Gender** is a societal or cultural belief that there are only two categories of gender, a male and a female.*

Executive Summary

Intersex persons face several challenges and human rights violations in accessing national documentation, medical treatment, education, and employment opportunities. Some of these challenges were highlighted in the Zimbabwe Human Rights Commission (ZHRC) National Inquiry on Access to Documentation (NI) and the Dialogue on the Human Rights Situation of Intersex Persons in Zimbabwe, conducted in December 2024.

Despite the growing international and regional momentum to protect the rights of Intersex persons, Zimbabwe continues to face significant challenges due to the absence of legal recognition and a lack of disaggregated statistical data. Kenya, Uganda, and Zambia and South Africa have made significant progress in advancing the rights of Intersex persons, following the adoption of the African Commission's Resolution 552² and the UN Human Rights Council's Resolution 55/14³. These resolutions call for states to protect and promote the rights of Intersex persons. Kenya has taken a leading role, with a landmark decision to introduce a third gender marker, formally recognizing Intersex persons. South Africa allows alteration of sex description on birth certificates of Intersex persons. The Zambia Medical Association in collaboration with the National AIDS Commission developed a Medical Management Protocol for Intersex persons in Zambia to guide medical professionals on the management of infant Intersex cases⁴. Uganda has also taken steps to align its legal and institutional systems with Resolution 552 and Resolution 55/14.

Therefore, there is a need for Zimbabwe to take clear steps to address the current non-recognition of Intersex persons in the country, non-availability of statistics relating to them, non-accommodation in terms of gender markers and non-availability of medical guidelines governing surgical treatments for Intersex persons particularly children.

1. Introduction

The Zimbabwe Human Rights Commission (ZHRC) 2020 National Inquiry on Access to Documentation (NI) in Zimbabwe highlighted challenges faced by Intersex persons in accessing civil registration documentation such as birth certificates due to the operating legal framework, which is based on the binary sex categories of male and female, excluding Intersex persons whose sex characteristics do not fit into the binary categories⁵.

In order to seek clarity on the rights of Intersex persons, the ZHRC held a *Dialogue on The Human Rights Situation of Intersex Persons in Zimbabwe* in December 2024 in collaboration with UNDP, Intersex Community of Zimbabwe (ICOZ), Ministry of Justice, Legal and Parliamentary Affairs, Ministry of Health and Childcare and Zimbabwe Association of Doctors for Human Rights. The dialogue deliberated on the challenges posed by the binary gender markers as well as the negative consequences of some of the medical surgeries that are performed on Intersex persons, sometimes at a young age among other issues.

In view of that, this policy brief aims to influence the adoption of a gender marker to accommodate Intersex persons and the formulation of medical guidelines for surgeries performed on Intersex persons.

2. Description of the problem

a) ***Lack of legal recognition of intersex persons:*** In Zimbabwe, there is no legal provision to recognize Intersex persons. The Constitution of Zimbabwe Section 81 (1) provides for binary categorisation of a child as being a boy or girl, thereby excluding Intersex children. The Births and Deaths Registration Act [Chapter 5:02] which guides civil registration maintains binary gender markers and one has to identify themselves as either male or female on civil registry documents such as birth certificates or national identity documents.⁶ Other African countries namely Kenya, Uganda and South Africa have made progress in aligning with Resolution 552 on promotion and protection of the rights of Intersex persons in Africa⁷ and Resolution 55/14 on combating discrimination, violence and harmful practices against intersex persons⁸. Kenya has formally included an "Intersex" ("I") marker in birth certificates through Legal Notice 153 of 2025 and is advancing the Intersex Persons Bill to prohibit involuntary medical procedures and establish healthcare protections. Additionally, the Kenya's Children's Act recognizes Intersex children and the National Human Rights Institution (NHRI) in Kenya has also been proactive in gathering evidence and data and doing advocacy work on the human rights of intersex persons⁹.

South Africa allows alteration of sex description on birth certificates of Intersex persons as provided for under Section 2 of the Alteration of Sex Description and Sex Status Act No 49 of 2003. Sex description on a birth certificate may be altered provided that a person submits a report prepared by a medical practitioner corroborating that the applicant is intersex and a report from a psychologist or social worker corroborating that the applicant has lived in the chosen gender for a period of two years before they can make an application to legally recognise that gender role Intersex¹⁰.

Zambia is developing a Medical Management Protocol for Intersex Persons in Zambia in collaboration with the Zambia Medical Association and the National AIDS Commission. In Uganda, the Registration of Persons Act allows intersex persons to amend sex markers on identity documents. Only intersex persons who have undergone surgical procedures and can provide certification from a medical doctor are eligible to apply for an update of their sex markers. This recognition is limited to binary options (male or female) under the Registration of Persons Act. The protocol guides medical professionals on the management of infant Intersex cases¹¹.

b) *Registration challenges for intersex persons:* The ZHRC NI on Access to Documentation¹² noted that:

- i. National documents in Zimbabwe are categorized into the conventional female and male sex categories without provision for Intersex persons
- ii. Parents determine the sex of Intersex children at an early age before the children are old enough to identify themselves as either female or male
- iii. The law does not accommodate Intersex persons who wish to change their sex on their identity documents as their bodies transform at puberty.
- iv. Intersex children face marginalisation in school activities such as sports.

c) *Lack of medical guidelines for surgeries performed on Intersex persons:*

Intersex persons and mothers of Intersex children and a representative from Doctors for Human Rights who attended the dialogue on the Human Rights Situation of Intersex Persons in Zimbabwe, that took place in December 2024 spoke on the issue of medical surgeries. They testified that Intersex children are frequently subjected to various surgeries and medical interventions, some of which are unnecessary but are undertaken to conform to the binary stereotype of male and female. These experimental procedures are often conducted on minors who cannot give consent and later bear the stigma and discrimination when their physical appearances fail to conform to the gender marker assigned at birth, upon reaching puberty. Intersex persons and mothers of

Intersex children at the December 2024 Dialogue attested to this by sharing their lived experiences.¹³ There is therefore need for medical guidelines of surgeries that are performed on Intersex children.

Resolution 552¹⁴ of the African Commission on Human and People's Rights (ACHPR/Res 552 LXXIV) calls for states to promote and protect the rights of Intersex children by ending non - consensual genital normalizing practices, to promote Intersex children through education and sensitization, prohibit a broad range of human rights violations against Intersex persons and to ensure that harmful cultural practices against Intersex persons are eradicated.

Resolution 552 also recommends African States to raise awareness on intersex issues and ensure that members of the judiciary, immigration officials, law enforcement officers, health, education and other officials and personnel are sensitized to the respect and equal treatment of intersex persons – highlighting the transformative impact of focused training¹⁵.

d) Lack of statistics on population of Intersex persons in Zimbabwe: Census reports statistics which are produced by the Zimbabwe Statistics Agency (ZIMSTATs) have no provision on statistics of Intersex persons. The Kenyan government, on the other hand, commendably included Intersex persons in its 2019 population census.

3. Methodology

A participatory qualitative approach was used to collect data used to compile this policy brief. Intersex persons presented the challenges they faced in accessing national documents during the National Inquiry (NI) conducted 2019 to 2020. Following these findings, the Zimbabwe Human Rights Commission (ZHRC) adopted an advocacy paper in 2023 titled *"Binary Gender Identity on Civil Registry Documents: Implications on the Rights of Intersex Persons in Zimbabwe."* This paper highlighted the systemic challenges and human rights violations faced by intersex persons.

As already reported, a dialogue was then convened in partnership with the United Nations Development Programme (UNDP) and the Intersex Community of Zimbabwe (ICOZ) to gather qualitative data on lived experiences of Intersex community. The Commission received first-hand information from the Intersex persons who gave testimonies on the challenges they experience concerning the medical surgeries, access to national documents, employment among other issues. As already noted, the dialogue was attended by stakeholders from the Ministry of Health and Child Care (MoHCC), Ministry of Justice, Legal and Parliamentary Affairs and Zimbabwe Association of Doctors for Human Rights. It is through this dialogue and literature review

that the medical and human rights concerns presented in this policy brief were collected.

4. Proposed Policies

- i. The State to consider domestication and implementation of Resolution 552 of the African Commission on Human and People's Rights to facilitate legal recognition of Intersex persons.
- ii. Zimbabwe to adopt a third gender marker that caters for Intersex persons in circumstances where it is required.
- iii. The State to ensure that there is a delay in assigning a gender marker on civil registration documents for Intersex persons until they reach puberty
- iv. The State to ensure that where an inappropriate gender marker and name has been given, Intersex persons should be allowed to change information on their identity documents.
- v. Zimbabwe to adopt medical guidelines for vital surgeries performed on Intersex persons and budgetary support for such vital surgeries.
- vi. The government of Zimbabwe to produce vital statistics on Intersex persons in Zimbabwe.

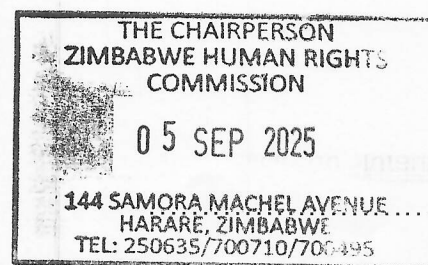
5. Policy Recommendations

Based on submissions made in this policy brief, the Zimbabwe Human Rights Commission recommends the following,

Government Ministry/ Department	Recommendation
1. Ministry of Home Affairs and Cultural Heritage (MoHACH)	a) To introduce a gender marker on civil registry documentation to accommodate Intersex persons b) To formulate policies which facilitate intersex persons to change gender markers and identity information on their civil registry documents if necessary.
2. Ministry of Justice, Legal and Parliamentary Affairs	a) To draft an Intersex Persons Bill that legally recognizes Intersex persons b) To draft legislation to regulate vital surgeries
3. Parliament of	a) Parliamentary Portfolio Committees on Justice, Legal and

Zimbabwe	Parliamentary Affairs, Women Affairs, Community, SME's Development and Health and Child Care; and Thematic Committees on Gender and Development, and on Human Rights to discuss the inclusion of intersex children under Section 81(1) of the Zimbabwean Constitution.
4. Ministry of Health and Child Care	a) To develop medical guidelines on surgeries on Intersex persons b) To delay declaration of gender markers on birth confirmation records for Intersex children until puberty c) To ensure access to affordable medical, surgical and hormonal treatments for underprivileged Intersex persons d) To sensitise medical personnel on Intersex variations and to facilitate provision for psychosocial support for parents of Intersex children. e) To establish oversight bodies.
5. Public Service Commission	a) To develop policies that facilitate employment of Intersex persons if the information on their identity documents is inconsistent with their physical appearance.
6. Service Commissions	b) To consider employment of intersex persons in police service or armed forces.
7. Ministry of Primary and Secondary Education	a) To develop policies that facilitate recognition of Intersex children and their participation in school activities such as sports.
8. ZIMSTATS	a) To produce disaggregated data or statistics on Intersex persons in the country.
9. Civil Society Organisations	b) To raise awareness on the rights of intersex persons.

Adopted by Commission Meeting



MS J.F. MAJOME (CHAIRPERSON)



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2 <https://achor.au.int/en/adopted-resolutions/resolution-promotion-and-protection-rights-intersex-persons>

3 <https://digitallibrary.un.org/record/4045699?v=pdf&ln=en>

4 <https://www.undp.org/zambia/stories/we-are-all-human-being>

5 Zimbabwe Human Rights Commission. 2020. Report on National Inquiry on Access to Documentation in Zimbabwe

6 The Births and Deaths Registration Act [5:02], Section 11(2)(a).

7 <https://www.undp.org/africa/blog/reflecting-global-progress-and-path-full-inclusion-intersex-persons>

8 <https://digitallibrary.un.org/record/4045699?v=pdf&ln=en>

9 [https://www.klrc.go.ke/images/TASKFORCE REPORT on INTERSEX PERSONS IN KENYA.pdf](https://www.klrc.go.ke/images/TASKFORCE%20REPORT%20on%20INTERSEX%20PERSONS%20IN%20KENYA.pdf)

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

11 Section 38 of the Registration of Persons Act (2015), Uganda.

12 ZHRC National Inquiry on Access to Documentation, page 35

13 Report On the Dialogue on The Human Rights Situation Of Intersex Persons In Zimbabwe And Key Priority Areas For Legal Reform And Policy Development On Intersex Human Rights, 2 December 2024

14 The ACHPR/Res.552 (LXXIV) calls state parties to promote and protect the rights of intersex persons on the continent by; *"Enacting enabling legislation and institutionalizing administrative processes that allow Intersex persons to change the gender designation on their birth certificates and other official documents, based on decision taken through medical intervention. lack of proper legal recognition and administrative processes that prevent intersex persons from acquiring or altering identity documents should be declared null and void and inconsistent with the national law"*¹⁴.

15 UNDP, Advancing the Human Rights of Intersex Persons in Africa: Implementing Resolution 552 of the African Commission on Human and Peoples' Rights and Resolution 55 of the United Nations Human Rights Council