



**SUBMISSION TO THE PORTFOLIO COMMITTEE ON SOCIAL DEVELOPMENT
ON THE CHILDREN'S AMENDMENT BILL [B18 – 2020].**

Prepared and submitted by:

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AVAILABLE TO MAKE ORAL SUBMISSIONS

I. INTRODUCTION

1. The organisations listed above hereby submit written comments on the Children's Amendment Bill, B18 of 2020.
2. This submission focuses on the issue of genital mutilation of children as contained in the current section 1(m) and section 12(3) of the Children's Act. This submission focuses on the experiences of intersex genital mutilation of intersex children in South Africa.
3. Before we provide any comments on the Bill, we take this opportunity to express our gratitude to the Portfolio Committee on Social Development for allowing us the opportunity to participate in the engagement process of the Bill.
4. **We are available to make oral representations on the submissions.**

II. Introduction to the organisations and individuals involved in this submission

INTERSEX SOUTH AFRICA (ISSA)

5. Intersex South Africa (ISSA) is an organization founded in 2010 by late intersex activist Sally Gross. ISSA seeks to raise awareness of intersex issues in South Africa, and promotes the rights to bodily autonomy and integrity of all intersex persons. ISSA collaboratively works at national and regional levels to advance the human rights of intersex persons through the strategic use of human rights mechanisms. The organisation also provides intersex-related technical assistance, education, training and advice to key stakeholders and engages in legal and policy review, reform and drafting for the development of an enabling environment for the human rights of all intersex persons.

WOMEN'S LEGAL CENTRE (WLC)

6. The WLC (<http://www.wlce.co.za/>) is an African feminist legal centre that advances women's rights and equality through strategic litigation, advocacy, education and training. The Centre has a vision of women in South Africa who enjoy equal and substantive access to their rights, being free from violence, empowered to ensure their own sexual health and reproductive rights, free to own their own share of property and resources, having a safe place to stay, access to work in a safe and equal work environment. The WLC was founded in 1998 and remains uniquely placed as the only dedicated women's rights legal centre of its kind in South Africa. Our programmatic work and focus areas are shaped by the women who seek assistance from us. This submission falls into our programmatic work on sexual and reproductive health and rights which is focused in ensuring that women's rights to make decisions about their bodies are respected, protected and realised.

TRIANGLE PROJECT

7. Triangle Project (<https://triangle.org.za/>) is a non-profit human rights organisation offering professional services to ensure the full realisation of constitutional and human rights for lesbian,

gay, bisexual, transgender, queer, intersex, plus (LGBTQI+) persons, their partners and families. Our three core services centre around Health and Support, Community Engagement and Empowerment, and Research and Advocacy. We offer a wide range of services to LGBTQI+ communities. These include sexual health clinical care, a needle and syringe programme, counselling, support groups, a helpline, public education and training services, community outreach, and court support to survivors of hate crimes. This submission falls within our Research, Advocacy and Policy Programme that works to advance the inclusion and protection of the human rights to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) within South African legislation, policy and practices.

TSHEGOFATSO JOSHUA SEHOOLE

8. Joshua Sehoole is a human rights activist, strategist and researcher with an MPhil in Human Rights and Democratisation in Africa (University of Pretoria) and an Honours Degree in International Politics (UNISA). He has expertise in public health reform and trans and intersex rights, and extensive experience in advocacy and communications and cross-regional movement building. He has consulted and held formal positions in the areas of research, community engagement and capacity strengthening, and strategic advocacy.

III. Lived experiences of intersex genital mutilation in South Africa

9. South Africa, thanks mainly to the pioneering work of Intersex activist and founder of Intersex South Africa (ISSA) Sally Gross, was the first country in the world to explicitly include intersex people within the definition of 'sex' in its Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) of 2000 and grant legal recognition to intersex, and transgender, people through the Alteration of Sex Description and Sex Status Act 49 of 2003.
10. Regardless of these protections, the testimonies of intersex persons, and healthcare professionals, indicate that intersex children continue to be subjected to 'medically sanctioned' non-consensual coercive genital surgery, more commonly known globally as intersex genital mutilation (IGM).¹ At the 73rd Session of the United Nations' Committee of the Rights of the Child in September 2016, Zane Dangor from the Department of Social Development, recognised these human rights violations on intersex children and stated that:

"as a government we do recognise that intersex traits are sex characteristics and not medical conditions, but at the same time we recognise that there are still practices where newborns and young children are having surgeries performed on them which are harmful".²

11. Due to medical pathologisation, intersex traits are often treated as shameful and needing 'correcting' even when the child has no health complications whatsoever. As stated by Dr Kevin Adams, senior specialist plastic surgeon at Groote Schuur Hospital and Red Cross Children's Hospital in Cape Town, these surgeries are *"largely based on tradition and not scientific*

¹ See here <https://health-e.org.za/2019/10/23/fighting-for-the-rights-of-intersex-people/>

² See here <https://mq.co.za/article/2016-10-27-00-sa-joins-the-global-fight-to-stop-unnecessary-genital-surgery-on-intersex-babies/>

evidence”.³ It is this pathologising medical tradition that has led to physical and mental harm to many intersex persons, such as ISSA member, Dimakatso Sebedi, who had to undergo seven years of emotionally and physically tormenting surgeries as a child in the name of ‘normalising’ her even though she had no health complications.

*“It was very difficult growing up, I spent 8 years in hospital, my home was the hospital. Even at home I never had privacy, relatives would undress me because they wanted to see if I truly had both parts or not, I never understood my private parts as private because they were never private for me. At the hospital they always wanted to fix me, but there was never anything wrong with me. I wish they could have left me alone”.*⁴

12. Unfortunately, Dimakatso’s story is not unique and many intersex people in South Africa have been victims of coerced, uninformed and unnecessary genital normalising surgeries on minors, aimed at altering their sex characteristics to suit social classifications of male and female. The surgeries are performed without the informed consent of the minor and are often irreversible, causing permanent infertility, permanent pain, loss of sexual sensation, and lifelong mental suffering, including depression. Victims often lack access to their health records as well as redress and justice. As Crystal Hendricks from ISSA states:

“It’s only when I was 22 years old when I visited a private gynaecologist that I discovered that the surgery years before had been to remove testes, not ovaries, all this without my consent or knowledge. I then took a test which confirmed that I am intersex, but when I returned to Tygerberg hospital no file or records could be found of the invasive procedure done on me.”

IV. Responses to Intersex Genital Mutilation (IGM) from a human rights framework

13. A number of United Nations (UN) committees and bodies have characterised intersex genital mutilation as a serious violation of human rights, and have called for legislative measures, initiation of a process of coming to terms with past and current practices, and for access to redress and justice for victims.
14. In 2011, the Committee against Torture (CAT) was the first UN body to recognise the lack of adequate laws ensuring redress and investigations in its review of Germany. The Committee explicitly called upon on Germany to *“Undertake investigation of incidents of surgical and other medical treatment of intersex people without effective consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation.”*⁵
15. In 2013, the call for legislative measures was seconded by the Special Rapporteur on Torture (SRT), who in his report on *“abuses in health-care settings that may cross a threshold of mistreatment that is tantamount to torture or cruel, inhuman or degrading treatment”* explicitly stated that:

³ See here <https://health-e.org.za/2018/01/15/government-urged-ban-intersex-genital-mutilation/>

⁴ Dimakatso’s story, see here <https://www.youtube.com/watch?v=FJLpEZqQvA4>

⁵ Committee against Torture, Forty-seventh session, 31 October–25 November 2011 available at https://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.DFU.CO.5_en.pdf [Accessed on 23 November 2011]

“Children who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that of their parents, ‘in an attempt to fix their sex’, leaving them with permanent, irreversible infertility and causing severe mental suffering.”

“These procedures [genital-normalizing surgeries] are rarely medically necessary, can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticized as being unscientific, potentially harmful and contributing to stigma.”⁶

16. In 2014, an Interagency Statement on Forced Sterilisation by the WHO and 6 more UN bodies explicitly also criticised IGM practices in general stating that:

“Children who are born with atypical sex characteristics are often subjected to cosmetic and other nonmedically indicated surgeries performed on their reproductive organs, without their informed consent or that of their parents, and without taking into consideration the views of the children involved.”⁷

17. Again in 2015, the WHO Report, “Sexual health, human rights and the law”, reiterated that:

“It has also been recommended [by human rights bodies and ethical and health professional organizations] that investigation should be undertaken into incidents of surgical and other medical treatment of intersex people without informed consent and that legal provisions should be adopted in order to provide remedies and redress to the victims of such treatment, including adequate compensation.”⁸

18. On occasion of Intersex Awareness Day 2016, 11 human rights mechanisms of the United Nations (Committee against Torture (CAT), Committee on the Rights of the Child (CRC), Committee on the Rights of People with Disabilities (CRPD), Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on violence against women, its causes and consequences, Special Representative of the UN Secretary-General on Violence against Children), the Council of Europe (COE), the African Commission on Human and Peoples’ Rights (ACHPR) and the Inter-American Commission on Human Rights (IACHR) issued a statement denouncing intersex genital mutilation. This joint statement specifically called upon states to,

“as a matter of urgency, prohibit medically unnecessary surgery and procedures on intersex children. They must uphold the autonomy of intersex adults and children and

⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 11 December 2013, para 76 – 77 available at https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf [Access on 23 November 2020]

⁷ OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, Eliminating forced, coercive and otherwise involuntary sterilization. An interagency statement, May 2014 Para available at https://apps.who.int/iris/bitstream/handle/10665/112848/9789241507325_eng.pdf;jsessionid=244672D39BAE68E4EC258BD9674BE7CB?sequence=1 [Accessed on 23 November 2020]

⁸ Pg 27 available at https://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf?sequence=1 [Accessed on 23 November 2020]

their rights to health, to physical and mental integrity, to live free from violence and harmful practices and to be free from torture and ill-treatment. Intersex children and their parents should be provided with support and counselling, including from peers.”⁹

19. The UN Human Rights Council unanimously adopted, in March 2019, a resolution on the Elimination of Discrimination against Women and Girls in Sport (Resolution 40/5), which:

*“Calls upon States to ensure that sporting associations and bodies implement policies and practices in accordance with international human rights norms and standards, and refrain from developing and enforcing policies and practices that force, coerce or otherwise pressure women and girl athletes into undergoing unnecessary, humiliating and harmful medical procedures in order to participate in women’s events in competitive sports, and to repeal rules, policies and practices that negate their rights to bodily integrity and autonomy”.*¹⁰

20. South Africa has also ratified the Convention on the Rights of the Child. During the review, the Committee noted with concern the high prevalence of harmful practices in South Africa. Intersex genital mutilation was listed as one of the practices that the Committee was concerned about. Following the review of the implementation of the Convention in South Africa, the Committee in its concluding remarks urged South Africa as a state party to, among other things,

“Guarantee bodily integrity, autonomy and self-determination of all children, including intersex children, by avoiding unnecessary medical or surgical treatment during infancy or childhood.”

21. The Yogyakarta Principles (2007)¹¹ and its supplement, the Yogyakarta Principles Plus 10 (2017),¹² are international human rights principles that guide States in the application and implementation of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) in their national laws, policies and practices. South Africa was involved in the development of the Yogyakarta Principles, and these principles have been recognised and applied by various United Nations bodies. Their applicability to the South Africa human rights context has also been affirmed by our courts.¹³ As such these principles are binding on South Africa, and they include a number of important principles speaking to the human rights of intersex people, among others, the Right to Bodily and Mental Integrity and the Right to Freedom From Torture and Cruel, Inhuman or Degrading Treatment or Punishment, which state:

*“Principle 32: The Right to Bodily and Mental Integrity
Everyone has the right to bodily and mental integrity, autonomy and self-determination irrespective of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to be free from torture and cruel, inhuman and degrading treatment or punishment on the basis of sexual orientation, gender identity,*

⁹ See here <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>

¹⁰ See here <https://undocs.org/en/A/HRC/RES/40/5>

¹¹ See here http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf

¹² See here http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

¹³ September v Subramoney NO and Others (EC10/2016) [2019] ZAEQC 4; [2019] 4 All SA 927 (WCC) (23 September 2019).

gender expression and sex characteristics. No one shall be subjected to invasive or irreversible medical procedures that modify sex characteristics without their free, prior and informed consent, unless necessary to avoid serious, urgent and irreparable harm to the concerned person.

STATES SHALL:

A. Guarantee and protect the rights of everyone, including all children, to bodily and mental integrity, autonomy and self-determination;

B. Ensure that legislation protects everyone, including all children, from all forms of forced, coercive or otherwise involuntary modification of their sex characteristics;

C. Take measures to address stigma, discrimination and stereotypes based on sex and gender, and combat the use of such stereotypes, as well as marriage prospects and other social, religious and cultural rationales, to justify modifications to sex characteristics, including of children;

D. Bearing in mind the child's right to life, non-discrimination, the best interests of the child, and respect for the child's views, ensure that children are fully consulted and informed regarding any modifications to their sex characteristics necessary to avoid or remedy proven, serious physical harm, and ensure that any such modifications are consented to by the child concerned in a manner consistent with the child's evolving capacity;

E. Ensure that the concept of the best interest of the child is not manipulated to justify practices that conflict with the child's right to bodily integrity; F. Provide adequate, independent counselling and support to victims of violations, their families and communities, to enable victims to exercise and affirm rights to bodily and mental integrity, autonomy and self-determination; [...]"

"Relating to the Right to Freedom From Torture and Cruel, Inhuman or Degrading Treatment or Punishment (Principle 10)

States Shall:

[...]

D. Recognise that forced, coercive and otherwise involuntary modification of a person's sex characteristics may amount to torture, or other cruel, inhuman or degrading treatment;

E. Prohibit any practice, and repeal any laws and policies, allowing intrusive and irreversible treatments on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including forced genital-normalising surgery, involuntary sterilisation, unethical experimentation, medical display, 'reparative' or 'conversion' therapies, when enforced or administered without the free, prior, and informed consent of the person concerned."

V. South African government's commitment to prohibit intersex genital mutilation and to protect the human rights, wellbeing, bodily integrity and autonomy of intersex persons

22. In December 2017, the Department of Justice and Constitutional Development, together with Intersex South Africa and Iranti, hosted a *National Dialogue on the Protection and Promotion of*

the Human Rights of Intersex People.¹⁴ At the dialogue, the Deputy Minister of Justice John Jeffery, gave an undertaking to raise the prohibition of surgery on intersex children with the Ministries of Health, Home Affairs and Social Development. He also mentioned the possibility of public hearings and/or an investigation into harmful practices by a Chapter 9 institution such as the South African Human Rights Commission or the Commission for Gender Equality. The recommendations flowing from the national dialogue included a number of legal interventions, including:

- *Banning intersex genital mutilation (IGM) surgeries in medical settings*
- *Enactment of self-standing legislation/directives to deal concretely with surgical and hormonal interventions on intersex children*
- *Amendment of Children’s Act – include recognition of the right to consent to surgical intervention by intersex children*
- *Amendment of Sterilization Act to cover intersex surgeries which may have a sterilising effect on children*
- *Definition of what would be considered medically necessary interventions on intersex children*
- *Making provision for redress and reparations for intersex adults, including adequately prolonging statutes of limitations*
- *Revision of the Alternation of Sex Description and Sex Status Act 49 of 2003*

23. In 2019, the South African government co-sponsored¹⁵ the UN Human Rights Council’s resolution (mentioned above) on the Elimination of Discrimination against Women and Girls in Sport (Resolution 40/5),¹⁶ signalling its strong commitment to eradicate policies and practices that force, coerce or pressure women and girl athletes into undergoing unnecessary, humiliating and harmful medical procedures.

VI. Comments on Children’s Act Amendment Bill

i. Lack of consultation with intersex individuals and organisations led by intersex people, and advancing rights of intersex persons in South Africa

24. We note from the Memorandum on the Objects of the Children’s Amendment Bill, 2020, that in the preparation of the Bill, there was no consultation with organisations led by, and advancing rights of intersex persons.

25. The memorandum notes also that a number of individuals were consulted; we assume also that no intersex persons were consulted specifically on their experiences of intersex genital mutilation in order to hear from them on how the law can be enacted and implemented in a manner that realises their rights.

¹⁴ See here <https://www.justice.gov.za/vg/lgbti/2018-NationalIntersexMeetingReport.pdf>

¹⁵ See here <https://digitallibrary.un.org/record/3797926?ln=en>

¹⁶ See here <https://undocs.org/en/A/HRC/RES/40/5>

26. We accordingly recommend that the Portfolio Committee ensure that when adjudicating on the Bill, they take intentional steps and measures to ensure that intersex persons and intersex-led organisations advancing their rights are consulted with to ensure that this amendment does not leave any child behind and/or ensure that intersex children do not continue to be made invisible in the development and adoption of laws in South Africa.

27. We wish to bring to the attention of the Portfolio Committee two statements made by the African Intersex Movement in 2017¹⁷ and 2019,¹⁸ which include South African intersex activists, and which call on governments to address intersex people's concerns and devise adequate solutions in direct collaboration with intersex representatives and organisations. The statements make the following demands, among others:

- *To put an end to mutilating and 'normalising' practices such as genital surgeries, psychological and other medical treatments through legislative and other means (such as education, policy and treatment protocol change). Intersex people must be empowered to make their own decisions affecting their own bodily integrity, physical autonomy and self-determination.*
- *To include intersex education in antenatal counselling and support.*
- *To put an end to non-consensual sterilisation of intersex people.*
- *To depathologise variations in sex characteristics in medical practices, guidelines, protocols and classifications, such as the World Health Organization's International Classification of Diseases.*
- *To create and facilitate supportive, safe and celebratory environments for intersex people, their families and surroundings.*
- *To ensure that intersex people have the right to full information and access to their own medical records and history.*
- *To ensure that all professionals and healthcare providers that have a specific role to play in intersex people's well-being are adequately trained to provide quality services.*
- *To acknowledge the suffering and injustice caused to intersex people*
- *To build intersex anti-discrimination legislation in addition to other grounds, and to ensure protection against intersectional discrimination.*
- *To recognise that medicalization and stigmatisation of intersex people result in significant trauma and mental health concerns.*
- *In view of ensuring the bodily integrity and well-being of intersex people, autonomous non-pathologising psycho-social and peer support be available to intersex people throughout their life (as self-required), as well as to parents and/or care providers.*

¹⁷ See here <https://www.astraeafoundation.org/stories/public-statement-african-intersex-movement/>

¹⁸ See here <https://www.astraeafoundation.org/stories/african-intersex-movement-statement/>

ii. Proposed amendment relating to genital mutilation

28. We note from the Memorandum on the Objects of the Children's Amendment Bill, 2020, that Clause 6 seeks to amend section 1(m) and section 12(3) which are focused on genital mutilation. We further note from the Memorandum that this amendment is intended to align the prohibition of genital mutilation with the new definition provided by the amendment Bill.
29. Section 1(m) and 12(3) of the Children's Act currently focus on providing a definition and prohibition of female genital mutilation respectively. The current proposed amendment aims to make the section focus generally on prohibiting any and/or all forms of genital mutilation as defined.
30. While we are encouraged by the decision, and steps taken to amend the Children's Act to ensure that genital mutilation is prohibited, we are of the view that the prohibition must be specific to the types of mutilation that are experienced in South Africa in order to ensure that any protective mechanisms are responding directly to the lived realities and experiences of those whose rights the Act seeks to uphold. This is indeed the manner in which section 12 has generally dealt with other practices that are banned because they are considered harmful to children.
31. In our opinion, we believe that intersex genital mutilation and female genital mutilation must be dealt with in a separate and therefore more visible manner by the Children's Act. Accordingly, we suggest that two sub-sections be added under section 12(3), with one subsection dealing with intersex genital mutilation and another subsection dealing with female genital mutilation, as these are two distinct harmful practices. As we noted earlier, our submission deals exclusively with intersex genital mutilation.
32. In order to avoid confusion and conflation of the issues and a possible misapplication of the law, it is necessary to deal with intersex genital mutilation as a separate rights violation.
33. We wish to draw attention to international examples of legislation from other countries that prohibit intersex genital mutilation, including Malta's Gender Identity, Gender Expression and Sex Characteristics Act (GIGESC) No. XI of 2015 and Argentina's Integral Protection of Sex Characteristics Bill, 2020 (currently before their Congress), which are international best practices that inform our recommendations:

Recommendations

34. The Bill must explicitly prohibit intersex genital mutilation (IGM) as defined below.

35. In order to effectively prohibit intersex genital mutilation, we propose that the Bill include the following definitions and sections:

DEFINITIONS

36. **Sex characteristics:** Biological and anatomical features of a person's sex, including (but not restricted to) primary sex characteristics like chromosomes, gonads, hormone-receptive tissues and genitals, as well as their reproductive capacity; and secondary sex characteristics like breasts; bone, cartilaginous and muscular structures; and bodily hair.
37. **Intersex:** an umbrella term used to describe a wide range of natural bodily variations in sex characteristics. Intersex people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit normative binary notions of male or female bodies – such variations may involve atypical genitalia, hormonal differences, or combinations of chromosomal genotype and sexual phenotype other than XY and XX. Some intersex traits are visible at birth while others are not apparent until puberty. Some chromosomal intersex variations may not be physically apparent at all.¹⁹ In South African legislation, intersex has been defined as '*a congenital sexual differentiation which is atypical, to whatever degree*'.²⁰
38. **Intersex Genital Mutilation (also 'IGM')**: surgical, hormonal and other medical interventions that are medically unnecessary and undertaken to modify diverse or atypical genitalia and other sex characteristics, primarily for the purposes of making a person's appearance suit social classifications of male or female. These interventions are often coerced, harmful and/or uninformed, and are typically undertaken without the full, free and informed consent of the person concerned. IGM and its consequences – for example permanent infertility, permanent pain, incontinence, loss of sexual sensation, and lifelong mental suffering - are often irreversible. IGM practices carried out on children may include other harmful medical interventions/treatments which may not be considered necessary for endosex children without evidence of benefit for the child concerned but justified by societal and/or cultural concerns or expectations.
39. **Medically unnecessary:** an intervention that is not strictly based on duly documented medical need related to serious present or future harm to a person's physical health or their life.

¹⁹ Office of the High Commission of Human Rights, Intersex Fact Sheet (2015)
<https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Intersex.pdf>

²⁰ Definition of intersex inserted by s16(a) of Act 22 of 2005 into the *Promotion of Equality and Prevention of Unfair Discrimination Act* 4 of 2000.

40. **Endosex:** a term to describe those who are not intersex, meaning, they were born with sex characteristics which meet conventional medical and social norms for typically 'male' or 'female' bodies.²¹
41. **Full, free and informed consent:** 'Full' refers to information that should be in a form that is accessible and understandable, presenting all available options – including unpopular ones – with accuracy and without prejudice. 'Free' implies no coercion, intimidation or manipulation. 'Informed' means that information is provided that covers (at least) the following aspects: the nature, reversibility, duration and consequences of any proposed procedure or process, the reason(s) for or purpose(s) of it, and the personnel likely to be involved in its execution – including distinguishing between required and non-essential personnel.²² The United Nations Special Rapporteur on Health has stressed that informed consent to any medical intervention goes beyond mere acceptance and must be voluntary and sufficiently informed in order to protect human dignity and autonomy. Particular care is required where there are power imbalances resulting from inequalities in knowledge, experience and trust between healthcare providers and individuals, particularly those from vulnerable groups.²³

Sub-Section on Intersex Genital Mutilation

42. All children have the right to have their bodily autonomy and bodily integrity protected with respect to their sex characteristics. Denying any child their bodily autonomy and integrity is a violation of their right to equality and non-discrimination.
43. Intersex genital mutilation is prohibited.
44. It is prohibited to perform any medically unnecessary intervention to alter the sex characteristics of any child without the explicit, full, free and informed consent of the child concerned.
45. It is prohibited to consent on behalf of a child to medically unnecessary procedures to alter the sex characteristics of any child either as a representative or a third party, including the parent(s) of a child.
46. When there is a duly documented medical need to alter a child's sex characteristics related to serious present or future harm to the child's physical health, mental health or their life, and where several alternative medical procedures are available, the respective risks, benefits and implications of each are to be duly informed, including to what extent they are invasive and reversible.

²¹ TJ Sehoole 'A Race Against Injustice: The Caster Semenya Case from a Decolonial Perspective' Master's Thesis, University of Pretoria (Centre for Human Rights), 2020 at 7.

²² *ibid.*

²³ A/64/272, para. 26.

47. All children between the ages of 12 and 18 can give full, free and informed consent to the alteration of their sex characteristics.
48. Children under 12 years of age who are old and mature enough will be able to give full, free and informed consent to the alteration of their sex characteristics.
49. If the age or maturity of a child or adolescent makes it impossible to obtain their full, free and informed consent, any medically unnecessary alteration of their sex characteristics shall be postponed until this requirement can be duly met.
50. Undertaking any medically unnecessary alteration of a child's sex characteristics in violation of the requirement of full, free and informed consent, is cruel, inhuman and degrading treatment.
 - 50.1 Anyone found guilty of such actions will be guilty of an offence of grievous bodily harm and must also be charged in terms of all applicable criminal law and civil laws.
 - 50.2 If applicable, disciplinary and professional charges should be brought by the respective bodies.
51. All children have the right to receive truthful and reliable information on all their sex characteristics and on any medical or other procedure that might have altered their sex characteristics; to have the circumstances of such alteration investigated; and when relevant, to receive the corresponding reparations.
52. In terms of the Identification Act 68 of 1997 and Births and Deaths Registration Act 51 of 1992, every child has the right to be identified as being of one sex in their proof of birth as long as specifying sex is a requirement for birth registration.
 - 52.1 In case of doubt about the legal sex to assign to the child, the best expectations based on previous intersex experiences of sex assignment and parental opinion will be taken into account.
 - 52.2 Under no circumstances will the recording of a child's sex be dependent on the realisation of a medical or surgical procedure to alter their sex characteristics of the child.
 - 52.3 If through clinical studies or any other source, supervening data arose after registration of the birth of a child, then procedures of Section 7 of the Births and Deaths Registration Act must be made available to enable such a child or their parents to apply to modify the original sex assignment in the birth certificate.
 - 52.4 In order to protect the rights of the child, the proof of birth and subsequently the birth certificate, will only record the assigned sex and no specification whatsoever about a person's sex characteristics.

53. Any person who, at the time when this law is passed, has an official identity document that has been issued contravening the provisions of this section must be able to access free and expedited administrative registration and issuing of new documents at the corresponding Department of Home Affairs office. This procedure will include, if needed, an administrative rectification of birth certificate and other documents.
54. Any person who exhibits a variation in their sex characteristics and those accompanying them in healthcare have the right to:
- 54.1 Complete, precise and adequate information on any procedure or treatment recommended to them;
 - 54.2 Personalized advice on the measures recommended by the treating team;
 - 54.3 Accompaniment and counselling provided by an interdisciplinary team whose members will not also be part of the treating team. This accompaniment team will include at least one Psychology and one Social Work professional if the individual or their parents so request it.
 - 54.4 Be notified, in a reliable manner of the prohibitions established in Article 4 in this Law.
 - 54.5 Fulfilment of the provisions in this section must be duly recorded and documented in the individual medical records and signed by those involved.
55. Any person who exhibits a variation in their sex characteristics has the right to access all medical information referring to them and stored in public and private institutions as prescribed by law including the Promotion of Access to Information Act 42 of 2001.
- 55.1 Medical records related to persons who exhibit a variation in their sex characteristics will be kept for a period of 50 years.
 - 55.2 Silence, refusal or any other violation of the duty to provide information as described in the present law will be considered as malpractice and lead to administrative or legal actions stipulated by the corresponding jurisdiction.
56. Whoever arbitrarily impedes, obstructs, restricts or otherwise undermines the full and equal exercise of the fundamental right to sex characteristics, will be obligated, upon the affected person's request, to annul the discriminatory act or cease to perform it and also to make reparations for any financial or non-financial damages caused.
57. Chapter 9 institutions or the Department of Health provincially and nationally or any other body receiving complaints from intersex persons who were subjected to intersex genital mutilation may request any public authority, health professional and public or private health service provider to supply and submit reports, data and documents. Public officers, institutions and individuals involved are obliged to provide those reports, data and documents and to facilitate the particular commission's access to them.
58. Comprehensive sex education must include content on bodily diversity, particularly the existence of different sex characteristics and the human rights of intersex people.

59. The relevant government departments must develop recommendations aimed at public and private universities so professionals in the different fields involved in offering different services to intersex children are trained in a manner that is consistent with the rights, prohibitions and mechanisms established in the present Act. Training and updating opportunities for professionals, particularly for those working in public pediatric urology, endocrinology and general surgery facilities across the country must also be promoted.

CONCLUSION

60. We trust that you will find this submission to the Children's Amendment Bill [B18-2020] useful. Should you have any comments or questions please do not hesitate to contact the contributors as noted above.

*****ENDS*****