



Intersex Justice in the Philippines

Inspiring Action through Research



*A Country Report on the situation of
intersex rights in the Philippines*

2024

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Preface

This report focuses on the current state of intersex rights and services in the Philippines and how it is situated under the larger context of LGBTQI+ rights and activism. It looks into the narratives and experiences of intersex Filipinos and assesses how existing laws and recent legislation on LGBTQI+ rights have impacted their lives. This report highlights both milestones in the advocacy as well as persisting gaps and challenges of the intersex community. This ultimately informs future strategies of legislation and advocacy work on intersex rights.

Acknowledgement

This report would not have been possible if not for the different activists, researchers, and organizations that have contributed to the existing literature and reports on LGBTQI issues in the country. I would like to specifically thank Atty. Claire De Leon from the Philippine Commission on Human Rights, Jap Ignacio from Babaylanes Incorporated, and the different member organisations of Lagablab Network who actively participated in the research process. I also give special mention to how Jeff Cagandahan, members of Intersex Philippines, and parents of intersex children, all bravely shared their narratives and experiences during the data collection phase. I also thank Prashant Singh for developing the framework and for tirelessly providing feedback and comments that only strengthened this report

Executive Summary

Intersex persons are individuals born with sex characteristics which are not easily categorized as male or female.¹ Intersex persons face a series of issues which continue to persist despite progressive legislation and the efforts of non-government organizations over the years.² This has warranted a comprehensive and country-level report about the situation of intersex Filipinos and how it is shaped by the current legal landscape in the Philippines.

The study conducted a literature search for academic, legal, and policy literature on this subject. Key interviews were also conducted with leaders in the movement which helped the research in the scoping exercise as well as how to better frame the research. Lastly, focus group discussions were conducted to verify the results of the desk research and surface more issues faced by intersex Filipinos from different parts of the country. Ultimately, this has mapped the existing laws, policies, programs, and other resources which are relevant and can be of use in the protection of the human rights of intersex persons in the Philippines. In the process, gaps in policies and literature also came to the fore.

The research has found that there exist no discriminatory laws directly against intersex persons but there are also little to no laws which recognise and protect the rights of intersex individuals. In this situation, LGBTQI+ advocates simply attempt to make the most out of laws, ordinances, policies and other available resources.³ Among them are the international treaties ratified by the Philippines which makes the country obliged to uphold the human rights of all Filipinos. The Philippines also voted in favour of the appointment of an Independent Expert on the Protection from Violence Based on Sexual Orientation and Gender Identity (IESOGI).⁴ Furthermore, the Constitution also recognizes that “the Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities.”⁵ Despite not being self-executory, this provision has been the basis for all types of progressive amendments.

The Magna Carta for Women has been a basis as well for mainstreaming intersex issues. Despite the provisions specifically being limited to the binary language of man and woman, in practice, gender mainstreaming efforts of government institutions have gone on to conduct programs for LGBTQI Filipinos.^{6,7} Given the

budget allocation of 5% of the national budget which the law provides for gender and development programs, the Magna Carta for Women has been instrumental in raising awareness and consciousness even for intersex persons.⁷ However, its implementation should improve especially in provinces. SOGIESC-based programs must also be developed to more efficiently utilize said funds.

The Philippines has also seen substantial developments in legal gender recognition. The Clerical Error Law was amended to allow petitioners to change their names and gender markers in their birth certificates so long as they can provide the necessary documents.⁸ Among them is a medical certificate proving that the petitioner has not undergone medical interventions to alter one's sex.⁸ However, the law remains inaccessible for most intersex Filipinos.

There is also growing protection from harassment and discrimination with the passage of the Safe Spaces Act⁹ and the various anti-discrimination ordinances in different localities covering sexual orientation and gender identity. It is notable however how sex characteristics as a ground is left out of the protected attributes in most of these ordinances.

Intersex persons continue to remain invisible in the law. Laws and policies like the Anti-Bullying Act,¹⁰ Child Protection Policy,¹¹ and the Gender Responsive Education Policy,¹² have substantially included sexual orientation and gender identity in recognition of the issues faced by LGBTI+ Filipinos. Yet, no provisions on sex characteristics and no mention of intersex persons can be observed to fully protect the rights of the intersex community. The Rare Disease Act is notable as it significantly included congenital adrenal hyperplasia (CAH), an intersex variation, in its provisions.¹³ However, despite the benefits which can be obtained from this law, especially in accessing healthcare needs, advocates do not agree with being labelled as a disease for it contributes to the ongoing stigmatization of intersex persons. Provisions including sex characteristics are available in certain bills for non-discrimination at the national level.¹⁴ However, the bill continuously faces delays in Congress and is yet to be passed into law.¹⁵ As a result, most intersex Filipinos remain vulnerable to discrimination. Low awareness and insensitivity is prevalent in many institutions which leaves intersex Filipinos excluded from accessing public services.

Given this legal and social environment, the research report recommends the enactment of laws which will protect the rights of intersex Filipinos. This includes: a policy on legal gender recognition intended to guarantee access to intersex Filipinos; an immediate ban on non-consensual medical surgeries on intersex infants and children; and the passage of a law on a national level which prohibits all forms of SOGIESC discrimination. Provisions on sex characteristics and intersex issues should also be integrated with existing protective policies and programs of government institutions. The Philippine Statistics Authority should also work closely with intersex advocates and experts in documenting more data and information on the intersex population in the country. This information should be utilized in the monitoring inclusion and progress of government programs, raising awareness of intersex rights, and addressing specific healthcare concerns of intersex persons, among others.

Intersex Asia

WE DEFEND **Intersex**
HUMAN RIGHTS IN ASIA



Intersex Asia Timeline

Intersex movement in Asia started in the 1990s from Japan, develops internationally since 2008 from Taiwan.

1. Introduction

- 1.1 Who are the intersex people?**
- 1.2 Locating the Intersex in the History of Gender and Sexual Minorities in the Philippines**
- 1.3 Brief Overview of Being Intersex in the Philippines**

1.1 Who are the intersex people?

Intersex people are individuals born with anatomic sex traits or sex characteristics which are not easily categorized as male or female. As these traits may be seen in chromosomes, genitals, and/or reproductive organs, etc., there is then no single form or category of being intersex.¹ The research of Fausto-Sterling found that 1.9% of the population are born with intersex variations and this could even be higher given that only some clinical patients' records were used and some with intersex variations may not self-identify as intersex.¹⁶

Despite that, many are still not familiar with the term intersex and the struggles of the community. Oftentimes, the term hermaphrodite is used. The latter refers to beings with fully functioning “male” and “female” sex organs. The term has achieved popularity because of the Greek myth of Hermaphroditus – one that was both male and female.¹ There are also the writings of the Greek Philosopher Plato depicting early humans with the combined bodies of the “two sexes.”¹ He also wrote how Zeus punished them by splitting them in half in order for them to look for their halves for the rest of their lives.¹ While there may be intersex individuals who use this term to self-identify, it is considered to be stigmatizing and would therefore prefer the term intersex.¹⁶

This preference has not come without a challenge. In 2006, “disorders of sexual development” (DSD) was also used in place of intersex by the medical community.¹ However, labelling intersex individuals as disordered despite living healthy lives reinforces the idea that being intersex is a medical condition that would need medical corrections. Thus, the Organisation Intersex International (OII), maintains its recommendation of using “intersex” to promote equality and remove the stigma faced by intersex people.¹⁷

1.2 Locating the Intersex in the History of Gender and Sexual Minorities in the Philippines

This stigmatization and the subsequent issues it holds for intersex people has had a long history. It is often traced to the time when Christianity considered anything which does not abide by their standards to be othered or punished as they were seen as demonic or sinful. This has placed intersex people as well as other gender and sexual minorities in a vulnerable position. This role of such institutions at specific historical conjunctions can even be seen in the history of how the Philippines has normalized and institutionalized norms such as the sex and gender binary, heteronormativity, and cis-normativity, among others.¹⁸

In the pre-colonial Philippines, there were indications of acceptance and recognition of those who did not conform to said norms. Particularly, there were the ancient shamans or priestesses called the “Babaylan” who held significant

roles in their respective communities.¹⁹ They were in charge of matters concerning medicine and faith while also actively taking part in matters concerning politics.¹⁹ This state of acceptance however changed as Spanish colonisation forcefully rearranged pre-colonial Filipino social institutions, particularly through religion. This has ultimately led to the current hegemony of Catholicism in the country and its interpretations which carry notions of patriarchy and machismo.¹⁸ While there is difficulty in finding records of how intersex people have been in these historical periods, this recognizes the role of conservative and patriarchal religious beliefs in strengthening societal expectations of being male and female.¹⁸

When it comes to the history of the LGBTQI+ movement in the Philippines, a lot of studies look at the resumption of civil society at the end of the late Philippine President Ferdinand Marcos Sr.'s dictatorship.²⁰ As civil society groups started organizing freely, a lot of them gained access to global frameworks and discourses including human rights.²¹ This saw the emergence of both lesbian and gay groups which at that time were organizing separately. It was only in 1998 in the Gay and Lesbian Leaders Conference wherein both groups started organizing side by side to push for a national legislative agenda - and that is to lobby for an anti-discrimination bill which at that time only covered sexual orientation.¹⁵

The emergence of the Philippine intersex movement in particular can be traced to the case of Jeff Cagandahan. In 2008, the Supreme Court decided to allow Cagandahan to correct his gender and name indicated in his birth certificate.²² As this decision was publicized, Jeff received a lot of media attention. Many advocates and intersex Filipinos subsequently reached out which led to an increase in their conversations and collective visibility.⁶ By 2013, there was already a significant number of intersex people in Asia in both formal and informal connections. A Facebook group created by Intersex Asia was a significant platform to gather and consolidate these people. Jeff eventually got personally involved in the conversations and then participated in the First Asian Intersex Forum in 2018. Under his leadership, Jeff co-founded Intersex Philippines in the succeeding year and it became legally registered as an NGO. It should be noted however that this is not the first intersex organization established in the country. The global advocacy and support group for intersex, Organization Intersex International established OII Philippines in 2014 by Jonalyn Bulado shortly after coming out with her story. Unfortunately, it has become difficult to invite new members and sustain the organization since not a lot were as ready as Jonalyn to come out. She was also instrumental in inviting Jeff to be more active in intersex advocacy.⁶

Intersex Philippines is currently involved mostly in partnership-building, consciousness-raising, and livelihood programs. By 2022, they got formally involved with the broader LGBTQI+ movement and network in the Philippines as they became a member-organization of Lagablab Network – the network of LGBTQI organizations in the Philippines lobbying for national and local pieces of legislation.⁶ As a relatively young organization, Intersex Philippines needs a study

on the realities faced by intersex Filipinos so that they can have a more informed and more strategic way of doing advocacy. This also helps them as they slowly take part in legislative battles in the country. With this in mind, this research study was developed by Intersex Philippines together with Intersex Asia.

1.3 Brief Overview of Being Intersex in the Philippines

Drawing from the conversations with intersex Filipinos and from the public statement released by Intersex Asia in the first Asian Intersex Forum, the community currently faces a series of issues. Some issues are shared with the broader LGBTQI+ community and some are particular to the intersex community. A lot of intersex people face violations of their bodily integrity as early as their time of birth when their genitals are mutilated to force them into either male or female categories recognized by the legal system. This then causes life-long issues and contradictions surrounding their legal gender markers.¹⁷ With them being invisible in the eyes of the state, they are often discriminated against or excluded from accessing healthcare, education, and social services including those in times of crises and emergencies. Intersex persons also face stigmatization, harassment, and an overall hostile environment. In these times, wherein redress and access to justice are critically needed, they continue to face exclusion and discrimination. On top of this, conversations with Jeff Cagandahan revealed that there is still a lack of knowledge and sensitivity even within the LGBTQI+ movement in the Philippines which provides a brief indication of the level of information available on Filipino intersex realities.

The lack of mainstream information about LGBTQI+ realities has been observed to be the contributing factor behind the persistence of stigma and discrimination.²³ This study addresses this concern by providing a comprehensive and country-level report about the situation of intersex Filipinos. This will revolve around issues particular to intersex Filipinos and how existing policies, programs, and mechanisms (or lack thereof) impact the rights of intersex persons in the Philippines. From the findings of this study, government institutions, NGOs, and other stakeholders will not only gain a deeper understanding of the community's situation but also construct more informed interventions to protect the rights of intersex individuals in the country.

2. Methodology

Methodology

This country-level research started with a desk mapping of academic, legal, and policy literature on this subject. A scoping exercise of all available literature on intersex issues and realities was first conducted. This is to comprehensively map effective and promising practices countering the negative social and gender norms against intersex people and conduct a comparative analysis of effective strategies that can potentially contribute to the transformation of the harmful social and gender norms.

This was undertaken by first working around the resources already available at the repository of Intersex Asia. Among these resources were academic journals, country-level reports, modules, toolkits, legislation, policies, and other related forms of literature. Included as well is information regarding the different advances made and the gaps identified in different countries. This provided the research with more information on the different themes and types of literature which may exist in the Philippines but are still unreviewed. This consequently made the literature search more informed and efficient.

Moreover, keywords such as “Intersex”, “Sex Characteristics,” “Intersex laws,” “Intersex Reports” and other related configurations were also used in different search engines (e.g. Lawphil.net) to also gather literature which is publicly accessible online. Furthermore, meetings and consultations with different organizations were also scheduled to gather more resources that are on the radar of queer Filipino activists (e.g. copies of anti-discrimination ordinances, country-level reports, etc.).

Initial meetings and interviews were also conducted with key leaders in the movement which helped the research in the scoping exercise as well as how to better frame the research.

The first interview for this project was conducted with Jap Ignacio, the Executive Director of Babaylanes, Inc., an LGBTQI resource centre in the Philippines. Babaylanes recently developed a one-stop online resource hub called Balangaw.ph for LGBTQI resources in the Philippines. The organization has provided a list of publications which might contain information on intersex Filipinos as well as their available copies of legislation including anti-discrimination ordinances throughout the country. The interview also attempted to surface how the network of LGBTQI+ organizations has approached intersex issues in recent years. Atty. Claire De Leon, the former Secretary-General of Lagablab LGBT Network who now works for the Commission on Human Rights (CHR) of the Philippines was also interviewed. Lagablab is the lobbying network in the Philippines which has fought for the anti-discrimination bill for more than two decades and is currently developing strategies for other pieces of legislation which will protect the rights of LGBTQI+ Filipinos. The interview provided general information on how laws in the Philippines work for persons of diverse SOGIESC, particularly intersex people. Lastly, Jeff Cagandahan, the founder of Intersex Philippines and

the Co-chair of Intersex Asia, was also interviewed to shed light on how intersex Filipinos face different forms of marginalization and how they navigate around the current legal landscape.

Date	Name	Designation	Institution	Topic of Discussion
November 15, 2022	Atty. Claire De Leon	Attorney IV	Commission on Human Rights	Relevant laws and institutional mechanisms for intersex rights
November 18, 2022	Jap Ignacio	Executive Director	Babaylanes, Inc	Civil society programs and efforts for intersex rights
December 7, 2022	Jeff Cagandahan	Co-Chair-person	Intersex Asia	Human rights issues faced by intersex Filipinos
February 10, 2023	Jeff Cagandahan	Co-Chair-person	Intersex Asia	Further clarifications on the history of Philippines Intersex movement
February 13, 2023	Jeff Cagandahan	Co-Chair-person	Intersex Asia	Current opportunities for legislation
February 14, 2023	Jap Ignacio	Executive Director	Babaylanes, Inc	Risks and strategies in lobbying

Please refer to Appendix A for details*

A validation workshop was also conducted with members of Intersex Philippines to monitor the progress and assess the initial findings of the desk research. This was soon followed by a series of focus group discussions not only to understand more narratives of stigma, discrimination, and violence, but to also reach a group consensus on the impacts of relevant policies and programs, and on the trajectory of the intersex movement in the Philippines. A total of 20 individuals from members of Intersex Philippines and parents of intersex children participated and they were divided into three groups. The first group consists of intersex Filipinos in Metro Manila and adjacent urban cities. Meanwhile, the second group consists of those residing in provincial cities and municipalities. This division aimed to surface possible differences in accessing services and justice between metropolitan and provincial residents. For example, all participants from the Metro Manila group reside in cities where there are anti-discrimination policies. Meanwhile, for the focus group on those residing in provincial cities and municipalities, only one of the participants resides in a locality with an anti-discrimination ordinance.

Lastly, another group was dedicated to the parents of intersex children was interviewed to focus on issues and opportunities encountered by families of intersex children, especially in the early stages of their lives.

These interviews along with literature were analyzed using the Asian Intersex Movement Public Statement as a framework. This document was a result of discussions among intersex advocates during the first Asian Intersex Forum held in Bangkok, Thailand in February 2018. In this document, the different issues and demands of intersex people were identified. These were then used as themes to dissect the legal situation and the status quo in the Philippines and show how these would impact the lives of intersex Filipinos.²⁴

Date	Focus Group	Topic
June 11, 2023	Members of Intersex Philippines from Metro Manila	Issues and challenges faced by intersex Filipinos in cities around Metro Manila
June 11, 2023	Members of Intersex Philippines from provinces	Issues and challenges faced by intersex Filipinos in rural and provincial areas
June 11, 2023	Parents of intersex children	Experiences of Intersex Children and their families

Please refer to Appendix A for details*

3. Substantial Laws, Policies, Court Decisions, Ordinances, Programs, and Resources Related to Intersex Rights

- 3.1 Commitment to International Frameworks**
- 3.2 Philippines Constitution**
- 3.3 Opportunities Provided by the Magna Carta for Women and the Philippine Commission on Women**
- 3.4 Significant Developments in the Legal Gender Recognition**
- 3.5 Growing Protection from Sexual Violence and Harassment**
- 3.6 Inclusion of Congenital Adrenal Hyperplasia (CAH) in the Rare Disease Act**

As mentioned earlier, There are no laws in the country that are directly discriminatory towards intersex people in general. However, there are also little to no laws which recognize and protect the rights of intersex individuals. Given this situation, LGBTQI+ advocates simply attempt to make the most out of laws, ordinances, policies and other available resources. These are further discussed in the sections below.

3.1 Commitment to International Frameworks

Through the ratification of international treaties, the Philippines is obliged to protect the rights of everyone including intersex persons. These treaties include the International Covenant on Civil and Political Rights (ICCPR),²⁵ the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁶ the Convention on the Rights of the Child (CRC),²⁷ the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),²⁸ and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),²⁹ among others.

In 2016, the UNHRC proposed the appointment of an Independent Expert on the Protection from Violence Based on Sexual Orientation and Gender Identity (IESOGI).³⁰ Their mandate is to ensure that LGBTQI+ persons around the world are equally protected by human rights laws through assessments on the implementation of human rights standards, raising awareness, identifying and addressing root causes of violence and discrimination, and engaging in dialogue with states, among other key roles.³⁰ The Philippines' representative abstained in the 2016 resolution but in the 2019 and 2022 resolutions on the extension of the mandate, the Philippines has consistently voted in favour.⁴

3.2 Philippines Constitution

The 1987 Philippine Constitution indicates in its State Policies that "The State values the dignity of every human person and guarantees full respect for human rights."³¹ It also indicates in the Article on the Bill of Rights that "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."³² Despite having no mention of persons of diverse SOGIESC, advocates use these provisions on the recognition and respect for human rights as the basis for legislative actions in support of LGBTQI+ rights. The Article on Human Rights and Social Justice even states that "The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities."⁵

3.3 Opportunities Provided by the Magna Carta Women and the Philippines Commission on Women

The Philippines currently has the Magna Carta of Women which was legislated on August 14, 2009. In practice, this has been an opening to tackle intersex issues and empower the community through various gender mainstreaming programs. The law seeks to “eliminate discrimination against women by recognizing, protecting, fulfilling, and the rights of Filipino women, especially those in marginalized sectors.”⁷ It explicitly states that all agencies, offices, bureaus, state universities and colleges (SUCs), government-owned and controlled corporations (GOCCs), local government units (LGUs), and other government instrumentalities shall formulate their annual Gender and Development (GAD) plans. It even mandates that these institutions should the allocation of at least 5% of their total national budget for the implementation of their GAD programs.⁷

Although there is a significant inclusion of the term sexual orientation in the Magna Carta for Women, it can be observed how the law continues the use of the binary language of gender or sex. However, based on experiences on the ground, some of the GAD programs of local government institutions would integrate a broad range of gender perspectives.^{15,33} The University System Gender and Development Committee of the University of the Philippines (UP) for example, has been utilizing a GAD framework and budget which not only focuses on women’s issues but also broader gender-related issues.¹⁵ The committee composed of GAD offices on different campuses under the UP system has been supportive of Pride-related activities and other programs designed for LGBTQI+ Filipinos. They are currently in the process of developing a non-discrimination policy protecting persons of diverse SOGIESC.¹⁵ Intersex Philippines is often invited to several discussions and forums by the UP Center for Women’s and Gender Studies - the office which convenes the different GAD offices across the university system.⁶ These programs and spaces have provided opportunities for them to mainstream the discussion of the struggles of intersex Filipinos in the country. Members get to learn different knowledge, skills, and capacities within these spaces. The visibility which they get from these programs has also allowed them to network not just with LGBTQI individuals and organizations but also with those who work in different areas of human rights and development work.

Similarly, in April 2022, the Philippine Commission on Women (PCW) which is tasked to monitor the implementation of the Magna Carta for Women released the Updated Gender Equality and Women’s Empowerment (GEWE) plan for 2019-2025.³⁴ This document explicitly recognizes the health needs of the “LGBTQIA community” and the need to revisit existing training modules to improve the access of the community to health services. No specific sections were made to discuss in detail the various health needs and issues faced by the intersex community, but this recognition can still have implications on how intersex advocates can potentially engage with the commission.

3.4 Significant Developments in the Legal Gender Recognition

Intersex activists have been advocating for the recognition that all adults and capable minors should eventually be able to choose the gender markers reflective of their gender identities.²⁴ This relates to legal gender recognition which is the official recognition of a person's gender identity, including gender markers and names, in public registries and key documents. Amendment of one's gender marker or name may involve an administrative or legal process and these changes are legally recognized.

The Republic Act No. 9048 or the Clerical Error Law of 2001 was one of the ways to substantially change clerical errors in one's birth certificate.³⁵ A clerical error was defined as harmless and innocuous mistakes in the performance of clerical work. These errors are typographical, "visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records."³⁵ However, the law's definition of clerical error also clearly states that no changes shall be made to a petitioner's sex.

To navigate this issue, many transgender and intersex individuals used delayed registration to obtain new Birth Certificates issued by the Philippine Statistics Authority (PSA), which can reflect their gender identities.^{2,33} According to the PSA's Revised Guidelines for Delayed Registration of Birth, even those beyond the age of 18 can register their births in the Office of the Local Civil Registrar of the place where the birth occurred.³⁶ Among the requirements for this processing are copies of the certificate of live birth (different from 'birth certificate'), an affidavit of delayed registration, and a negative certification of birth record from the PSA. Most of these efforts had been unchecked by the PSA over the years but this strategy would be nearly impossible now with the introduction of a digital and computerized registration system.^{2,33} This makes it easier for the PSA to reveal multiple birth certificates registered. Given that the birth certificate is treated as the primary document on which succeeding legal documents will be based, the legal gender markers assigned for most intersex Filipinos remained throughout their lives regardless of how they identify later on. This makes them vulnerable to a lot of discrimination, especially in accessing services and facilities which rely on identification documents.

The significant change in this area started in the 2008 with case of the Republic of the Philippines vs Cagandahan. The Supreme Court ruled in favour of a name and gender marker change to Jeff Cagandahan given his intersex variation-Congenital Adrenal Hyperplasia (CAH). In its reasoning explaining the approval, the Court said Jeff "has simply let nature take its course and has not taken unnatural steps to arrest or interfere with what he was born with...And accordingly, he has already ordered his life to that of a male."²²

By 2011, the Republic Act No. 10172 amended the Clerical Error Law of 2001.

One of the amendments is that it now allows changes in a person's registered sex without the need for a judicial order.⁸ Consistent with the previously mentioned Supreme Court ruling, this amendment states that any petition involving the change of sex shall be accompanied by a certification from an accredited government physician "attesting the fact that the petitioner has not undergone sex change or sex transplant."⁸ These developments can be used by intersex persons to change their sex markers without judicial orders, provided that they can go through the procedures, accomplish the requirements, and prove the clerical error. It is worth noting that while this is a step forward for the intersex community, this has unfortunately been a setback for the transgender community.³⁷

3.5 Growing Protection from Sexual Violence & Harassment

Intersex Filipinos are vulnerable to gender-based harassment both in private and public spaces. In 2018, the Safe Spaces Act was enacted to ensure "equality, security and safety not only in private but also on the streets, public spaces, online, workplaces and educational and training institutions."⁹ It prohibits sexual harassment in streets, public spaces, online, workplaces, and educational or training institutions. The law currently maintains a sex and gender binary approach and has no mention of sex characteristics or intersex persons. However, gender identity is defined in the law as socially-ascribed characteristics to delineate it from assigned sex at birth. Among the forms of harassment included are "catcalling, wolf-whistling, unwanted invitations, misogynistic, transphobic, homophobic and sexist slurs, persistent uninvited comments or gestures on a person's appearance...or any advances, whether verbal or physical, that is unwanted and has threatened one's sense of personal space and physical safety..."⁹ While particular mentions of intersex-related concerns were not made, this may be used in addressing slurs and unwanted comments often faced by intersex Filipinos. This can be seen as substantial progress in protecting intersex persons from violence and harassment but the law is still relatively new. Further implications of this law on the intersex community must be observed.

3.6 Inclusion of Congenital Adrenal Hyperplasia (CAH) in the Rare Disease Act

There is a need to improve the access of intersex Filipinos to responsive healthcare which meets their specific physical and mental health needs and issues.²⁴ A notable law on this is the Republic Act No. 10747 or the Rare Disease Act. The law

made specific provisions to protect the right to health of persons suffering from diseases – “their right to survival and full and healthy development as individuals through access to timely health information and adequate medical care.”¹³ In the Integrated Rare Diseases Management Program Strategic Plan 2022-2026,³⁸ developed under this law vis-à-vis the Universal Healthcare Act, Congenital Adrenal Hyperplasia (CAH) was listed as one of the rare diseases recognized by the Department of Health (DOH).³⁹ Aside from the integration of CAH into the delivery of health and nutrition services and the overall government program, they will also be entitled to financial assistance and fiscal incentives.

Although Jeff raised how a lot of intersex activists would want to avoid the term “disease” he acknowledges how this could help a lot of intersex Filipinos.^{2,24} Persons with rare diseases will also be legally considered by the Rare Disease Act as persons with disabilities (PWD) which means that they are also provided with the protections and privileges detailed in the Magna Carta for Disabled Persons.^{40,41} This includes a 20% discount on medical and dental services among many others. Another aspect of the Rare Disease Act is its provision for educating and training health personnel in handling those living with these diseases. This includes education, information, and training programs, as well as capacity-building on the identification and referral of persons with rare diseases. It is acknowledged how this can be an entry point to mainstream sensitivity on CAH, and possibly other intersex variations.

A drawback would be the use of the terms “disease and disability” which contributes to the pathologization of intersex variations and possibly create stigma for intersex persons. Still, it is difficult to deny how the benefits which come along with this law can potentially help address the healthcare needs and issues of the community. Furthermore, the law and its strategic plan which includes CAH is relatively new. It is also difficult to assess this early how much this law is being accessed by the community.

3.6 Emerging Anti-Discrimination Ordinances at the Local Level

In the recent decade, numerous anti-discrimination ordinances were passed at the local level to protect anyone from discrimination on attributes including SOGIESC. According to the mapping conducted by Babaylanes, Inc., more than 50 ordinances were successfully passed in 34 cities, 13 municipalities, and three barangays, as of 2022.³⁷ This covers around 32% of the total population based on the 2020 National Census. This is a mix of SOGIESC-specific and comprehensive anti-discriminatory ordinances, the latter including other identities as part of the protected attributes. However, these ordinances differ in terms of their

provisions. Differences include the categories of prohibited acts and the protected attributes stipulated to be the basis of such discriminatory acts. Some ordinances only cover sexual orientation, while some do not mention SOGIESC at all. Most of these ordinances would cover sexual orientation, gender identity, and gender expression. No mention of sex characteristics can be observed in the ordinances collected and analyzed by the network. The ordinances of Malolos City (2022)⁴² and Ilagan City (2019)⁴³ would include intersex in their definitions of LGBTQI and the affirmative acts mentioned, but they are not included in the prohibited acts. It is also worth noting that the ADO of Zamboanga City (2020)⁴⁴ did not include sexual orientation in its definition of discrimination. However, it did include discrimination based on “sex,” which the ordinance defined as, “refers to male, female or intersex.”

While discrimination based on sex characteristics is still hardly addressed, intersex Filipinos can still use policies and ordinances with mentions of gender identity and expression to deal with some discriminatory incidents they encounter, so long as they are under the selected jurisdictions. While the extent of protection provided by these policies varies, it is critical to have provisions: on discrimination in employment; in education and training institutions; in the delivery of goods and services; in health services, insurance, and facilities; in access to facilities, transportation, and spaces; in accommodation; issuances of license and clearances; accreditation of organizations; harassment; disclosure of identity without consent; and other analogous acts.

A lot of companies and workplaces are also exploring and implementing ways to protect LGBTQI+ Filipinos from discrimination and promote diversity and inclusion.¹⁵ This has been observed as a trickle-down effect of multi-national companies adopting diversity and inclusion policies and programs. LGBTQI+ organizations take this as an opportunity to mainstream SOGIESC and promote LGBTQI+ inclusion in these workplaces. Basic information on intersex rights and issues also needs to be discussed in the process.¹⁵

Intersex Asia

WE DEFEND **Intersex**
HUMAN RIGHTS IN ASIA



Intersex Asia Timeline

Intersex movement in Asia started in the 1990s from Japan, develops internationally since 2008 from Taiwan.

4. Current Gaps in Intersex Rights in the Philippines

- 4.1 Persistent Inaccessibility of Legal Gender Recognition**
- 4.2 Lack of Protection of Intersex Person's Bodily Integrity**
- 4.3 Persistent Harassment Faced by Intersex Filipinos**
- 4.4 Lack of a National Anti-Discrimination Law and Inclusion of Sex Characteristics in Existing Laws**
- 4.5 Limited Legal and Medical Infrastructures to Meet the Healthcare Needs of Intersex Filipinos**
- 4.6 Limited Protection on the Right to Privacy of Intersex Filipinos**
- 4.7 Limited Comprehensive Education and Awareness of Intersex Filipinos**

4.1 Persistent Inaccessibility of Legal Gender Recognition

Despite the significant changes in legal gender recognition policies allowing the change of a person's sex entry, there is still a need to improve the accessibility of these procedures for intersex Filipinos. In the Republic Act No. 10172 amending the Clerical Error Law of 2001, the petitions in changing first names should be supported by a certification from the petitioner's employer, the National Bureau of Investigation, and the Philippine National Police, attesting to the fact that they have no pending administrative, civil or criminal case, nor criminal record.⁸ The petition shall also be published in a newspaper in circulation once a week for three consecutive weeks. This is on top of petition fees, at least two documents showing the correct entry upon which the correction or change shall be based, and other documents which the petitioner or the city or municipal civil registrar or the consul general may consider relevant and necessary for the approval of the petition."⁸ For changing the sex entry of a person, petitioners must also undergo medical tests and secure a certification issued by an "accredited government physician attesting to the fact that the petitioner has not undergone sex change or sex transplant."⁸

While legal gender recognition is possible, intersex persons would have to go through this process and secure all these documents. This means time and money which not all intersex Filipinos have. Moreover, there are still those whose petitions get denied by the local civil registrar despite fulfilling requirements.² Other intersex persons may also not be guaranteed access to these legal advancements considering the different variations of being intersex. Many intersex Filipinos have also undergone medical interventions. Regardless if there was consent or not, these could potentially be a barrier considering how the process of accessing legal recognition needs attestation from government physicians who may not be knowledgeable of intersex realities.^{45,46}

In May 2012, Argentina passed a gender identity law which allows the change of gender markers on birth certificates and all associated documents.⁴⁷ This no longer requires a medical diagnosis, surgeries or hormonal treatments, and there also are no age or other restrictions on who can access these provisions.⁴⁷ No such legislation currently exists in the Philippines which will make it easier for intersex Filipinos to have identification documents reflecting their gender identities. A law adopting a self-determination model would also be beneficial to transgender Filipinos.

4.2 Lack of Protection of Intersex Person's Bodily Integrity

One issue particular to intersex persons can occur immediately after birth. Some infants are born with external genitalia which do not easily fit into typical male and female sex categories. In these cases, doctors in the Philippines often treat such as abnormality as it is difficult for them to assign sex in birth certificates

that only has male and female options.² Genital mutilation is often performed with the consent of parents and guardians who are pressured into providing consent without full knowledge of its implications.²

There is no law which requires these procedures nor are there guidelines in performing these types of interventions. Like in many countries, intersex genital mutilation is performed under societal and medical norms.¹⁷ In addition to the risks of anaesthesia and surgery, these procedures are irreversible and can lead to further medical complications such as the growth of abnormal tissues, and scarring, among others. Other studies have also shown how significant percentages of those who have undergone these surgeries have encountered problems in terms of desire and sexual sensations.¹⁷ Furthermore, they could leave them vulnerable to psychological harm including gender dysphoria, self-harming behaviours, suicidal tendencies, and trauma. Some surgeries would even involve regular vaginal dilation or the repeated forcing of a solid object into the vagina of a child.⁴⁸ These procedures can be extremely painful and likened to sexual abuse or even torture. The United Nations Human Rights Council has even stressed that these medical surgeries are completely unnecessary and are harmful to the full enjoyment of the human rights of intersex persons.⁴⁹

Apart from these non-consensual corrective surgeries, intersex Filipinos, especially those in provinces, experience being courted to be subjects of medical case studies and experimental research without fully being disclosed of potential risks and harms, and other ethical considerations.⁴⁶ A participant from the focus group residing in provinces even shared how she was asked to prepare 15,000 pesos just to proceed with the tests accompanying the research. The focus group reached a consensus that this is common in different provinces as intersex traits are not often encountered. Conducting research and experiments on intersex bodies provides respective medical centres with chances to gain more merit in the medical field even at the expense of intersex persons. The group expressed how this can be dehumanizing for them in the process.⁴⁶

In 2015, Malta became the first European state to legislate protections for the right to bodily integrity and physical autonomy of intersex persons. Under Article 14 of the Gender Identity, Gender Expression and Sex Characteristics Act (GIGESC Act),⁵⁰ it is unlawful to perform these surgical and hormonal interventions on a minor until they are capable of providing free and fully informed consent. If a minor decides to undergo these surgeries, they must fully understand the treatments being proposed and the risks involved. Guardians, through which the minor express their consent must also consider the best interests of the child as expressed in the United Nations Convention on the Rights of the Child.²⁷

In the Philippines, there is no such legislation which will recognise and protect these rights and will ban these interventions from occurring. There is the Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation,

and Discrimination Act⁵¹ which was legislated in 1992 and protects children from forms of exploitation, physical and psychological abuse, and even cruelty and neglect. However, there are no specific provisions that are particular to what intersex children are experiencing. Without these institutional mechanisms, societal and medical notions which perpetuate these human rights violations will continue to persist.

4.3 Persistent Harassment Faced by Intersex Filipinos

Intersex Filipinos are vulnerable to different forms of harassment, whether they are sexual in nature or not. In their childhood years, they have been prone to invasive acts. They would encounter peers who would strip them naked to see their genitals.^{45,46,52} These acts are not only done by their peers but also by teachers and other adults. One participant shared that a group of teachers in their school coerced them to show their genitals out of curiosity. This further fuelled campus gossip about their intersex trait.⁴⁵

These acts continue to persist to this day despite the passage of the Safe Spaces Act. Intersex people continue to encounter acts and remarks that are invasive even in workplace settings. Some of these are often overlooked as they can be committed under the guise of curiosity or good intentions. There is a need for local government to improve their implementation of the law and dissemination of right-based anti-sexual harassment education to prevent these acts from occurring. As it is now, the law is not being properly communicated and intersex Filipinos are left unaware of how to access this law and their rights, in particular to their experiences of being intersex. There remains an anxiety that filing incident reports can further expose their intersex variations to their respective communities.

4.4 Lack of a National Anti-Discrimination Law and Inclusion of Sex Characteristics in Existing Laws

Despite the emergence of numerous anti-discrimination ordinances at the local level. There is still a glaring lack of a national anti-discrimination law which protects Filipinos of diverse SOGIESC from different parts of the country. Intersex persons are also vulnerable to discriminatory acts especially with identification documents not reflecting their gender identities. Currently, the Labor Code which acts as the national law governing employment practices and labour relations in the Philippines, mentions in its Declaration of Basic Policy that the state shall ensure equal opportunities. However, the law only states that it is unlawful to “discriminate against any woman employee with respect to terms and conditions

of employment solely on account of her sex.”⁵³ No mention of sexual orientation, gender identity, expression, and also sex characteristics can be observed in any of its provisions.

Activists have already been lobbying for an anti-discrimination law for 23 years now.⁵⁴ The Anti-Discrimination Bill which was first filed in 2000 covered sexual orientation. A few years later it included gender identity and gender expression and was refiled with the name “SOGIE Equality Bill” in 2017 in both the Senate and the Congress.⁵⁵ No mention of sex characteristics was included until it was refiled in 2020 for the 18th Congress. This version defines both sex characteristics and intersex, and it states the prohibition of different discriminatory acts based on SOGIESC. Since the 19th Congress, it has then been referred to as the SOGIESC Equality Bill covering all SOGIESC attributes whether actual or perceived.

In 23 years, the farthest that the bill has come was when it was unanimously approved in the lower house of the 17th Congress.⁵⁵ However, it was ultimately delayed in the Senate. According to lobbyists, a lot of legislators could have voted in favour of this bill. It was even supported by numerous government institutions, universities, public personalities, and even certain religious leaders. But, the leadership in both the Senate and the House of Representatives were still persistent in delaying its progress.³⁷

There is also a bill called Comprehensive Anti-Discrimination Bill which focuses not only on SOGIESC but also other bases of discrimination. Jap noted that the network has lobbied for both versions but they have observed how certain legislators attempt to remove SOGIESC from this bill. Particularly for the case of sex characteristics, Deputy Speaker Bienvenido Abante Jr. of the 18th Congress blocked all attempts to include sex characteristics noting that doing so would only complicate the law.³⁷ While the emergence of these local anti-discrimination ordinances is a step towards the protection of persons of diverse SOGIESC from discrimination, many Filipinos of diverse SOGIESC are still left unprotected.

It is also worth noting that in most of these ordinances and other relevant laws and government programs in the Philippines, Intersex Filipinos and their specific needs and issues remain invisible. Even the recently passed policies which have provisions for protecting gender and sexual minorities or other marginalized communities, intersex persons are still left out. This has been attributed to the fact that in over 20 years of lobbying for these laws and policies, there was limited expertise and knowledge on intersex rights and policy-making spaces have not always guaranteed intersex representation.^{45,46}

In local anti-discrimination ordinances, the protected attributes do not include sex characteristics. These ordinances do not even mention sex characteristics or intersex with the exception of the Zamboanga, Malolos, and Ilagan City ordinances. As mentioned in the previous sections, the ordinance of Malolos City (2022) and

Iligan City (2019) only mentioned intersex in affirmative acts while Zamboanga City (2020) included discrimination based on “sex,” which the ordinance defined as, “refers to male, female or intersex.”⁴⁴ Not only are the provisions of these three ordinances lacking, but they are also only three out of the more than 50 anti-discrimination ordinances which were passed.

When it comes to discrimination and violence particularly in educational institutions, many policies have been passed in the recent decade. In 2013, the Republic Act No. 10627 or the “Anti-Bullying Act” was passed.¹⁰ The law considers gender-based bullying as prohibited and punishable and it has been defined as “any act that humiliates or excludes a person based on perceived or actual sexual orientation and gender identity (SOGI)”⁵⁶ in its implementing rules and regulations. In incidents wherein bullying is committed by any school personnel, the Child Protection Policy of 2012¹¹ can be the basis for filing a complaint directly to the Department of Education (DepEd). Both documents mentioned sexual orientation and gender identity as protected attributes. While this protects those of diverse sexual orientations and gender identities no mention of sex characteristics was made which would ensure the protection of intersex students.

According to the report of Human Rights Watch, aside from bullying, the gendered environment in educational institutions in the Philippines is notably hostile towards those who do not conform to their assigned sexes at birth. These are manifested in uniforms, restrooms, gendered curricula, and many more.⁵⁷ DepEd also released an order in 2008 stating that uniforms in public schools should not be allowed, this is not being implemented and monitored properly. Bullying based on SOGIESC persists in many educational institutions. A lot of issues in educational institutions also revolve around accessing gendered goods, services, and facilities that are appropriate to the identities of transgender and intersex individuals.¹⁵ It also comes to a point wherein remarks can be considered as forms of sexual harassment, especially in cases where the private parts of transgender and intersex youth are being brought up to question their gender.¹⁵

In times of crisis situations, inequality is further exacerbated which means that policies are needed to ensure that marginalized communities are still protected in these situations.⁵⁸ However, no policy or law contains provisions for protecting intersex persons in calamities, disasters, pandemics, and other crisis situations.

Currently, the law recognizes the rights of women to “protection and security in times of disasters, calamities, and other crisis situations especially in all phases of relief, recovery, rehabilitation, and construction efforts” under the Magna Carta for Women. It mandates the state to provide humanitarian assistance and resources which will address the particular needs of women. This indicates that responses to disaster situations shall include “psychosocial support, livelihood support, education, psychological health, and comprehensive health services, including protection during pregnancy.”⁷ Similarly, Children’s Emergency Relief

and Protection Act recognizes the need to protect the fundamental rights of children before, during, and after disasters and other emergency situations. The law mandates the Department of Social Welfare and Development (DSWD) to create a Comprehensive Emergency Program for Children which will promote the rights of children in different stages of development.⁵⁹ The program shall cover the: prioritization of infants of children below 5 years and those with disabilities; establishment of child-friendly spaces; plan of action for the resumption of education; delivery of health services responsive to children's needs; prioritization of the Violence Against Women and their Children Desk to monitor and report violence; and many more.

Unfortunately, no similar law for intersex Filipinos and the broader LGBTQI= community is enacted which will strengthen the recognition and response to their added vulnerabilities in crisis situations. As a result, the difficulties that the community faces on a day-to-day basis are further heightened. Lagablab Network together with the Commission on Human Rights and the UNDP released a webinar which presented the national situation on LGBTQI Filipinos during the COVID-19 Crisis.⁶⁰ The added vulnerabilities which were discussed include but are not limited to the following:

- Delay and disruption of the particular healthcare for transgender and intersex Filipinos (and even people living with HIV).
- Food insecurity
- Elevated risk to family and domestic violence
- Isolation, stigma, and discrimination
- Non-recognition of LGBTQI-led families in emergency responses
- Abuse of state power

Civil society organizations are the ones which attempt to fill this gap by providing emergency responses and humanitarian assistance specifically to LGBTQI Filipinos. Multiple LGBTQI+ groups are providing financial assistance and livelihood programs in times of disaster in their respective localities. Many of these organizations even emerged during the time of the lockdown as a need to address the particular needs of the community. Some are now also developing modules which engage government institutions to include LGBTQI Filipinos in their responses.¹⁵ But, with no law recognizing these realities, these issues will remain unresolved.

There are laws in place which recognize the marginalization of certain groups and protect their rights. However, the needs and issues of LGBTQI Filipinos are still hardly recognized and addressed. And in those policies and laws which seek to protect gender and sexual minorities, intersex Filipinos are not always included.

4.5 Limited Legal and Medical Infrastructures to Meet the Healthcare Needs of Intersex Filipinos

Intersex Filipinos have distinct healthcare needs and issues but most medical institutions and professionals remain oblivious to these facts. The Republic Act No. 11223 or the Philippine Universal Health Care Act aims to promote and protect the right to health of all Filipinos by guaranteeing equitable access to different quality and affordable healthcare goods and services. It also states that the government should adopt a comprehensive approach to protect all Filipinos from hazards and risks that could affect their health and a “people-oriented approach for the delivery of health services that are centred on people’s needs and well-being, and cognizant of the difference in cultures, values, and beliefs.”³⁹ This law guarantees that there should not be any discriminatory policies regarding healthcare in the Philippines. However, with the lack of specific provisions on affirmative programs for the intersex population, and a lack of anti-discriminatory law which explicitly prohibits discrimination on the basis of SOGIESC, intersex Filipinos still encounter numerous forms of barriers in accessing healthcare goods and services.² While the Department of Health has a clear policy on sensitivity in providing treatment, they are still not yet capacitated on treating specific health needs of the LGBTQI community.

The current healthcare system remains oblivious to the health concerns of the intersex community. Some intersex variations are life-threatening and yet many medical professionals and health care service providers still lack significant information regarding the realities of the community, especially those providing primary care. This leads to multiple stigmatizing, discriminatory, and overall insensitive remarks against intersex people.² As a result, many would distance themselves from these services or would go to extra lengths just to address health concerns whether particular to the community or not.² This is also a shared experience with the broader LGBTQI community wherein the lack of sensitivity and the discriminatory interpersonal treatment deter patients away from healthcare goods and services.⁶¹ The focus group discussions also surfaced about how relevant medical examinations are limited and are concentrated in a few hospitals in Metro Manila.^{45,46,52} Parents of intersex infants can be told that their child can die within seven days and they have to travel to Manila to avoid this circumstance. This is particularly more difficult for those in island provinces who have to fly to Manila considering the travel time and the need to book expensive airline tickets. Upon arriving, parents have experienced being referred to different hospitals multiple times given the lack of a proper system or program in handling these types of emergencies.⁵² Furthermore, relevant medicines are rare and expensive.² They are limited to and monopolized by a single pharmaceutical group and families of intersex children would have to pay thousands of pesos per month. Middle-men would also get involved to provide easier transport of medicines but would increase the prices progressively making them further inaccessible.⁵²

Being misdiagnosed or not being provided a diagnosis is also very common. A participant from the focus group narrated how he was diagnosed with hermaphroditism right away. Only after getting tested in Manila did he discover that he has partial androgen insensitivity syndrome (PAIS) instead.⁴⁶ One participant shared that due to the inability to provide a proper diagnosis, the hospital refused to provide the medical records to the patient.⁵² Another parent of an intersex child also narrated a similar experience. Their child has been given a wrong diagnosis and was consequently provided with different sets of medication. Aside from the economic loss, these wrong prescriptions also imply health risks for intersex Filipinos.⁵² Lastly, another participant even developed cancer due again to misdiagnosis which left the medical conditions associated with his variation untreated.

With all the harm these cases bring to many intersex Filipinos, they also become vulnerable to many mental health issues. This includes gender dysphoria, depression, and anxiety, to name a few. However, even mental health service providers are not always sensitive to dealing with intersex patients. As a result, their mental health concerns continue to be overlooked.^{2,45,46}

The only law or program so far for intersex Filipinos would be the Rare Disease Act. As of now, however, it only still recognizes Congenital Adrenal Hyperplasia (CAH). With many intersex variations each with their own medical needs, and with the lack of sensitivity and training of medical professionals and overall medical infrastructures catered, intersex Filipinos would continue facing difficulty in accessing quality and appropriate healthcare services.

4.6 Limited Protection on the Right to Privacy of Intersex Filipinos

A person's right to privacy is already rooted in the Constitution of the Philippines. Section 3 states that "the privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law."⁶² Furthermore, there is the Republic Act No. 3185 known as the Revised Penal Code which criminalizes "revelation of secrets" which applies to public officers.⁶³ This protects the "secrets" or confidential patient information which may have been disclosed to government physicians. The Philippine Medical Association (PMA) also recognizes the duty of health providers and the rights of patients to their right to privacy.^{64,65} Finally, there is also the Republic Act No. 1017 or Data Privacy Act which seeks to protect all types of information of any natural or juridical person involved in personal information processing. This includes the sensitive personal information of a patient provided that "the processing is necessary for purposes of medical

treatment, is carried out by a medical practitioner or a medical treatment institution, and an adequate level of protection of personal information is ensured.”⁶⁶

However, the right to privacy of many intersex Filipinos continues to be violated. The intersex variation of Filipinos is supposed to be sensitive personal information, however, it is not always being treated as such by healthcare providers. This was a recurring narrative among participants of the focus group discussions. A participant recalled how everyone in their community knew about her intersex variation ever since she was born. The midwives involved did not treat it as sensitive information and word eventually got out.⁴⁵ One of the parents also narrated how her child was stripped in the lobby for everyone passing to see the child’s genitals.⁵² These incidents further put intersex children in vulnerable positions to stigma, harassment, and discrimination. Participants also recalled how this is also common in workplaces upon discovery of their intersex variation. Because of this, intersex Filipinos experience anxiety during mandatory medical examinations in workplaces.⁴⁵

As of now, there are laws in place protecting the right to privacy of specific populations of patients who are under the care of health service providers and who are not necessarily within a physician-patient relationship. There is the Republic Act No. 11166 or the Philippine HIV and AIDS Policy Act which applies to the handling of information, both the identity and status, of persons with HIV;⁶⁷ the Republic Act No. 9165 or the Comprehensive Dangerous Drug Act of 2002 which protects the confidentiality of records of those who have undergone drug rehabilitation;⁶⁸ and the Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004 which protects the confidentiality of records pertaining to cases of violence against women and their children.⁶⁹ No similar law is dedicated to protecting the right to privacy of intersex Filipinos in these situations.

Disclosure of a person’s SOGIESC without consent is also under the prohibited acts stated in the SOGIE Equality Bill.¹⁴ However, with it not yet passed and without a law dedicated to improving the protection of the right to privacy of intersex Filipinos, these incidents will continue to persist.

4.7 Limited Comprehensive Education and Awareness of Intersex Filipinos

There are efforts from the government, civil society, and the media to provide education and awareness on intersex issues but they remain limited. The DepEd, in line with its GAD programs, issued the Gender Responsive Education Policy which is mandated by the Magna Carta for Women and the Enhanced Basic

Education Act of 2013. This document recognizes the prevalence of violence, physical and psychological bullying, and sexual violence targeted against LGBTI+ youth. It aims to “undertake gender-mainstreaming in education to address both enduring and emerging gender and sexuality-related issues in basic education.”¹² Sexual orientation, gender identity, and gender expression were also included in the policy’s definition and provisions but again, intersex and sex characteristics were not mentioned at all. While there have been educational institutions which have tackled intersex issues, the practice is still not well rooted in law. Furthermore, the focus group discussions surfaced how only the Metro Manila focus group recognized an improvement in SOGIESC awareness as a result of gender mainstreaming efforts of various gender and development offices in their respective government-run offices. In the provincial group, there was a consensus that GAD offices in their area do not cover SOGIESC at all. Even the only participant in the group who resides in a province with an anti-discrimination ordinance agreed. This underutilization of GAD funds and the non-inclusion of intersex education contribute to low awareness of intersex issues in the broader society.

This limited sensitivity and awareness can also be observed in the media. Several films depicting the lives of intersex Filipinos were released over the years. The first would be the “Dalawang Kasarian: The Jonalyn Bulado Story.”⁷⁰ The title roughly translates to “Two Sexes/Genders: The Jonalyn Bulado Story.” This was released as an episode in 2014 of the late-night drama anthology, “Magpakailanman” a major Filipino free-to-air television station. This depicted the life and struggles of Jonalyn Bulado, the founder of OII Philippines. While this has been significant in being the first documented feature of an intersex person in mainstream television in the country and in providing general information on the different forms of marginalisation faced by the community, this has not been handled with utmost sensitivity. An example would be how the full episode was released on YouTube last 2019 and has garnered around three million views with the title “Magpakailanman: My Girlfriend is a Man.” While the intention may have been to provide information, the media’s sensationalization of intersex narratives may have proven to be counterproductive.

Beyond sensationalization, media groups also interfere with the lives of intersex persons. One participant narrated how when she was a child, their family got invited to be featured in a documentary. They also offered to pay for her surgeries as long as they could film the entire process. Fortunately for her, she had relatives who strongly went against the offer.⁴⁵ Because of these types of incidents with media groups, Intersex Philippines has become very careful in accepting media invites. They make sure that media platforms are to be used for consciousness-raising and that intersex Filipinos have a say in how media representation should be done.²

The more sensitive media depiction of intersex narratives would be the multi-awarded 2019 movie called “Metamorphosis.”⁷¹ The film tells the story of a boy

named Adam, who recently discovered his intersex variation and is now about to navigate through the changes brought about by this discovery. The film is also regarded for its contribution to sharing the stories of intersex Filipinos. It provides a glimpse of what they go through in significant life stages and it humanizes them in the process. In a more practical contribution, after this film's release, Intersex Philippines received a surge of calls and invitations asking them to participate in interviews. To avoid sensationalization, they have only been responsive to those which were for academic and legal research.

When the government, educational institutions, and the media are lacking in sensitive awareness, civil society often takes the consciousness-raising role. Members of Intersex Philippines are mostly working on consciousness-raising and mainstreaming sensitivity when it comes to intersex issues. Many LGBTQI+ activists are now developing primers and modules to raise awareness of the particular issues and realities of intersex Filipinos. However, they remain limited due to the lack of resources and data on intersex persons in the country. Furthermore, not every LGBTQI organization or activist would be well familiar with intersex-related information – something which intersex advocates have observed.

5. Conclusion & Recommendations

- 5.1 Legal Gender Recognition of Intersex Persons**
- 5.2 Banning of Non-consensual Medical Interventions on Intersex Children**
- 5.3 Passage of the SOGIESC Equality Bill**
- 5.4 Inclusion of Sex Characteristics in Existing Laws and Policies**
- 5.5 Improving Access of Intersex Filipinos to Quality and Appropriate Healthcare Services**
- 5.6 Addressing Gaps in Data, Research, and Education**

The Philippine government is still unable to fulfil its obligations to international human rights treaties. Despite guarantees of the Philippine Constitution on equal protection under the law, laws which directly protect intersex persons are still lacking. Even with the passage of local anti-discrimination ordinances and other laws for gender and sexual minorities, provisions nor direct mentions of intersex persons are not included. This report proposes the following recommendations.

5.1 Legal Gender Recognition of Intersex Persons

While gender markers on legal documents can be changed using the Republic Act No. 10172 which amended the Republic Act No. 9048 or the Clerical Error Law of 2001. This must be assessed however by the community on how accessible this is still. Further legislation should be passed to explicitly guarantee intersex persons the change of their legal gender markers rather than having to argue for clerical error and undergoing medical tests which decrease the access of intersex persons to legal gender recognition. This also initiates the recognition of intersex persons in the Philippine legal system.

5.2 Banning of Non-consensual Medical Interventions on Intersex Children

The Philippine government should also initiate an investigation of medical interventions performed on infants or children with intersex variation. A law should also be enacted to immediately ban these non-consensual mutilation, genital surgeries, medical experiments, and other normalized medical and psychological interventions on intersex children that are corrective in their approach.

5.3 Passage of the SOGIESC Equality Bill

The SOGIESC Equality Bill has been languishing in the Congress for more than 20 years. It is now time to finally make it into a national law. This would sanction discriminatory acts in education, workplaces, and health institutions, among others. The bill also aims to promote positive depiction in the media, and it will require government agencies to establish diversity programs and undergo training on human rights, gender sensitivity, and sensitization on the issue of violence. Ideally, this prevents discrimination based on SOGIESC in social institutions. Then they may also incorporate these activities into their existing training programs, even school curricula and instructional materials. Given that

there are numerous versions of this bill, legislators and advocates should ensure that the final law will include provisions on sex characteristics and recognize the issues of intersex persons.

5.4 Inclusion of Sex Characteristics in Existing Laws and Policies

Provisions on sex characteristics and intersex should be amended into existing laws and policies which already include sexual orientation and gender identity as protected attributes. This will ensure or improve the access of intersex Filipinos to these laws and policies. This includes but is not limited to anti-discrimination ordinances, the Anti-Bullying Act, the Child Protection Policy, and the Gender Responsive Policy.

5.5 Improving Access of Intersex Filipinos to Quality and Appropriate Healthcare Services

The Department of Health should ensure through policies and programs that the specific healthcare needs of intersex persons are being addressed. The approach must also be responsive and not corrective. This should include de-pathologization of intersex variations in medical practices and protocols; ensuring that intersex people have full information and access to their own medical records and history; and provision of accessible and appropriate healthcare that meets the physical and mental health needs and issues of intersex people; and other relevant provisions. While some of these are covered by the rare-disease act, the law does not recognize all intersex variations and the labelling of “rare-disease” adds to the pathologization of intersex traits. ensuring that hospitals, clinics, and healthcare service providers are knowledgeable of intersex issues and are sensitive enough to provide quality services.

5.6 Addressing Gaps in Data, Research & Education

The Philippine Statistics Authority (PSA) should work with intersex advocates in generating data and information on the intersex population without necessarily registering infants of intersex traits in a different sex category. Other government agencies and their respective research and policy arms should also do the same to ensure that the intersex population are included in their programs and even monitor changes and developments in the lives of intersex Filipinos. Many

LGBTQI organizations are now actively working with the PSA, including intersex Philippines. This can be an entry point for this specific engagement. Aside from policies, the Department of Education should work on the integration of this basic information on intersex persons in school curricula, modules, and other resources to end stigma and raise awareness on intersex issues.



6. Way Forward

The lack of legal gender recognition is one identified factor from which many instances of discrimination faced by intersex Filipinos arise. There is already a Supreme Court decision that legally allows intersex Filipinos to have their names and gender markers changed. This means that future legislation can build off from this point in eliminating the restrictions found in the procedures. The Department of Health has also been already engaging multiple LGBTQI+ advocates and organizations so intersex advocates should also be involved to start the conversation on banning non-consensual and corrective medical interventions on intersex people as well as the multiple health-related issues of the community. The same can be said with the Philippine Statistics Authority which is already starting their SOGIESC-sensitive practices. They have already started asking the LGBTQI+ community about factors to include in survey questionnaires so intersex advocates should also be part of these discussions. As LGBTQI+ organizations work on scaling up the number of anti-discrimination ordinances and other inclusive policies and programs, they should also target the amendment of existing ones to include provisions specific to the realities of intersex Filipinos. Lastly, in all future legislative battles, intersex advocates and organizations should always have a voice to ensure that provisions on sex characteristics and intersex persons would not be dropped just like it was in the past.

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Appendix

Interview with Atty. Claire De Leon of the Commission on Human Rights

Date: November 15, 2022

Time: 6:00pm

Duration of Discussion: 45 minutes

Discussion:

- 1.No law in the Philippines explicitly discriminates intersex persons but there is a lack of legislation which will protect them from discrimination and violence
- 2.While the constitution guarantees equality and non-discrimination, they are not self-executory
- 3.Anti-discrimination ordinances are legislated in different cities and localities but they barely cover sex characteristics
- 4.Intersex persons can file a petition to change name and gender under the amended clerical error law but they would have to undergo a long process and even a medical test
- 5.Intersex advocates should work together with trans advocates on where the discussion on legal gender recognition should go

Interview with Jap Ignacio of Babaylanes and Lagablab Network

Date: November 18, 2022

Time: 4:00pm

Duration of Discussion: 1 hour

Discussion:

- 1.Many LGBTQI activists have been pushing for an anti-discrimination law for more than 20 years through the Lagablab Network which was established in the late 90s. The SOGIESC Equality Bill can be traced to 2000 when it was first filed but only in the recent congress was sex characteristics included in the versions of the bill. This shows how intersex issues are often left behind.
- 2.While waiting for a national law, activists are also pushing for anti-discrimination ordinances at the local level. This also being conducted in universities. The one being lobbied together with the UP Center for Women's Studies for the University of the Philippines specifically includes provisions on sex characteristics and mentions intersex.
- 3.However, in a mapping conducted by Babaylanes, most of the ordinances do not mention sex characteristics nor intersex persons.
- 4.Intersex Philippines only became formally part of the national network (Lagablab and Free to be Me Communities of Action) this 2022 – indicating once again how much the network has to catch up on intersex issues and rights.
- 5.The Free to be Me program focuses on legal and policy change, socio-economic development, building strong foundations, and generating public support. The involvement of Intersex Philippines in this consortium enables the monitoring of the intersex inclusion in these programs.
- 6.LGBTQI organizations are actively filling the gap in government programs. Organizations are engaging with different government agencies including the Department of Labor and Employment to raise awareness on LGBTQI issues and to influence laws and policies.
- 7.Most research, modules, and toolkits relating to LGBTQI Filipinos mention intersex issues but only briefly.

Interview with Jeff Cagandahan of Intersex Philippines

Date: December 7, 2022

Time: 6:00 pm

Duration of Discussion: 1 hour and 30 minutes

Discussion:

1. Intersex children in the Philippines are still forced to undergo medical surgeries to “correct” their external genitalia and for them to easily fit sex categories in certificates of live births. Parents are pressured to give consent without fully knowing the consequences of these surgeries
2. There is no data regarding intersex population in the Philippines especially from the Philippine Statistics Authority
3. Some intersex Filipinos have life-threatening intersex variations and health service providers remain insensitive and unaware on how these issues should be treated properly.
4. The Rare Disease Act has been a way to seek support but many intersex persons do not agree with being labelled as a disease.
5. Some medicines for intersex variations are very limited and expensive in the Philippines
6. Despite changes in laws regarding the change of name and gender markers, petitions of many intersex Filipinos still get denied by local civil registrars
7. With official records not reflecting their identities, many intersex Filipinos face stigma and discrimination in public spaces and in different institutions
8. Bullying is a common narrative for intersex Filipinos in academic institutions; no information on intersex realities are also taught in schools
9. Intersex Filipinos struggle in accessing restrooms and other facilities. They are often met with violence and harassment
10. A lot of intersex Filipinos have navigated the issue of legal gender recognition through loopholes in the guidelines of late registry. The PSA have become stricter in recent years making this nearly impossible.
11. A lot of intersex Filipinos are still unaware of intersex realities and relevant laws which apply to them
12. Many LGBTQ activists remain insensitive and unaware of intersex issues
13. Intersex persons also face discrimination in offices which are supposed to provide redress
14. Intersex persons and their issues are not being recognized in times of crisis.

Interview with Jeff Cagandahan of Intersex Philippines**Date:** February 10, 2023**Time:** 6:00 pm**Duration of Discussion:** 30 minutes**Discussion:**

1. Jonnalyn Bulado started OII Philippines years before Intersex Philippines was established. This however was not sustained out of difficulty in finding members
2. When Jeff came out as intersex because of the Supreme Court ruling, he became connected to many intersex persons in different parts of the world.
3. He eventually attended the first Asian Intersex Forum and eventually decided to work on intersex rights
4. In 2019, Intersex Philippines finally became SEC registered
5. Intersex mostly focus on visibility and raising awareness on intersex issues
6. The challenge that the organization currently face is the sustainability of members since most have regular jobs
7. Intersex Philippines recently became part of Lagablab and the Free to be Me Communities of Action which allowed their members to learn from fellow advocates. This is also a chance to educate other advocates on intersex rights
8. Many media institutions reach out to intersex Philippines for interviews but members are careful not to participate in programs which sensationalize the narratives of intersex Filipinos

Interview with Jeff Cagandahan of Intersex Philippines**Date:** February 13, 2023**Time:** 6:00 pm**Duration of Discussion:** 25 minutes**Discussion:**

1. A senator has expressed his interest in sponsoring a bill dedicated for intersex persons
2. Some suggest that it might be more strategic for this bill to pass if it were to push for a separate intersex legal gender recognition from that of trans persons
3. This will be raised with other LGBTQI advocates considering its implications on transgender legal gender recognition

Interview with Jap Ignacio of Babaylanes and Lagablab Network

Date: February 14, 2023

Time: 4:00pm

Duration of Discussion: 30 minutes

Discussion:

1. In the recent mapping of anti-discrimination ordinances conducted by Babaylanes, only three ordinances out of 50 have mentioned intersex or sex characteristics.
2. Other legislators have removed sex characteristics in certain non-discrimination bills as to avoid confusion and as a form of compromise with conservative stakeholders.
3. As with the case of legal gender recognition however, it might be more strategic to lobby for a separate law intended for solely intersex persons given the court decision on Jeff Cagandahan's case.
4. However this has implications on the struggle of transgender Filipinos for legal gender recognition.
5. It might be good to discuss this as well with transgender advocates as to avoid conflicts and to strategize together.
6. Certain intersex individuals may also identify as transgender. Furthermore, most of the barriers faced by intersex Filipinos in accessing change in legal names and gender markers are kept to keep transgender persons from accessing the law on substantial changes in legal documents.

Focus Group Discussion: Metro Manila Group

Date: June 11, 2023

Time: 9:20 AM

Duration of Discussion: 3 Hours

Discussion:

1. Intersex Filipinos already experience stigma, discrimination, and violence, as early as the moment they are born. A participant noted that their entire village became aware of her intersex traits as soon as their clinic saw her genitals when she was born.
2. All participants were at one point pressured to undergo surgery. Some of them did not proceed due to their own refusal as they have grown up while some refused due to lack of financial capacity.
3. Participants then constantly experienced stigma, discrimination, and harassment growing up not just from peers but also from adults. This is especially true for those whose external physical appearance do not fit into the typical appearance of a man or a woman of which they identify with.
4. Intersex Filipinos are oftentimes invited by various media groups for them to be featured in their respective films and shows. However, they commonly have no say in the direction of the film and the tendency is for them to be sensationalized and painted as freaks.

5. Intersex Filipinos also struggle in accessing amelioration programs because these are oftentimes catered to typical families but the intersex-led households do not fit this typical mould.
6. The rare disease act is commended for its inclusion of CAH but intersex Filipinos hope that other variations could also be included
7. The GAD offices have been helpful in mainstreaming LGBTQI issues but there is always a lack in in-depth discussions on intersex issues. Other GAD offices also do not efficiently utilize the GAD budget
8. Current laws on legal gender recognition are still inaccessible for intersex Filipinos
9. SOGIE Equality Bill must be passed and must include sex characteristics

Focus Group Discussion: Provincial Group

Date: June 11, 2023

Time: 1:13 PM

Duration of Discussion: 2 Hours

Discussion:

1. Intersex Filipinos already experience stigma, discrimination, and violence, as early as the moment they are born.
2. A particular narrative found within the group is the prevalence of medical experiments and case-studies wherein intersex patients are the subjects. Informed consent is not always provided for patients. This practice is often overlooked given that these commonly occur in provinces far from Manila.
3. Those in provinces often have to travel to Manila just to access necessary health services such as medicines and tests. Existing services in provinces may sometimes be more expensive than those in Manila considering how they have to transport samples and tests results.
4. Misdiagnosis of intersex patients are common and these patients are prescribed with wrong medications. As a result they are subjected to more health risks
5. Similar to participants in Metro Manila, participants also experienced stigma, discrimination, and harassment growing up not just from peers but also from adults. This is especially true for those whose external physical appearance do not fit into the typical appearance of a man or a woman of which they identify with.
6. Gender Mainstreaming efforts of GAD offices in provinces may not be as effective as those in Metro Manila. Participants have yet to encounter efforts from these offices to talk about intersex issues or SOGIESC concepts at least.

Focus Group Discussion: Parents of intersex children Group

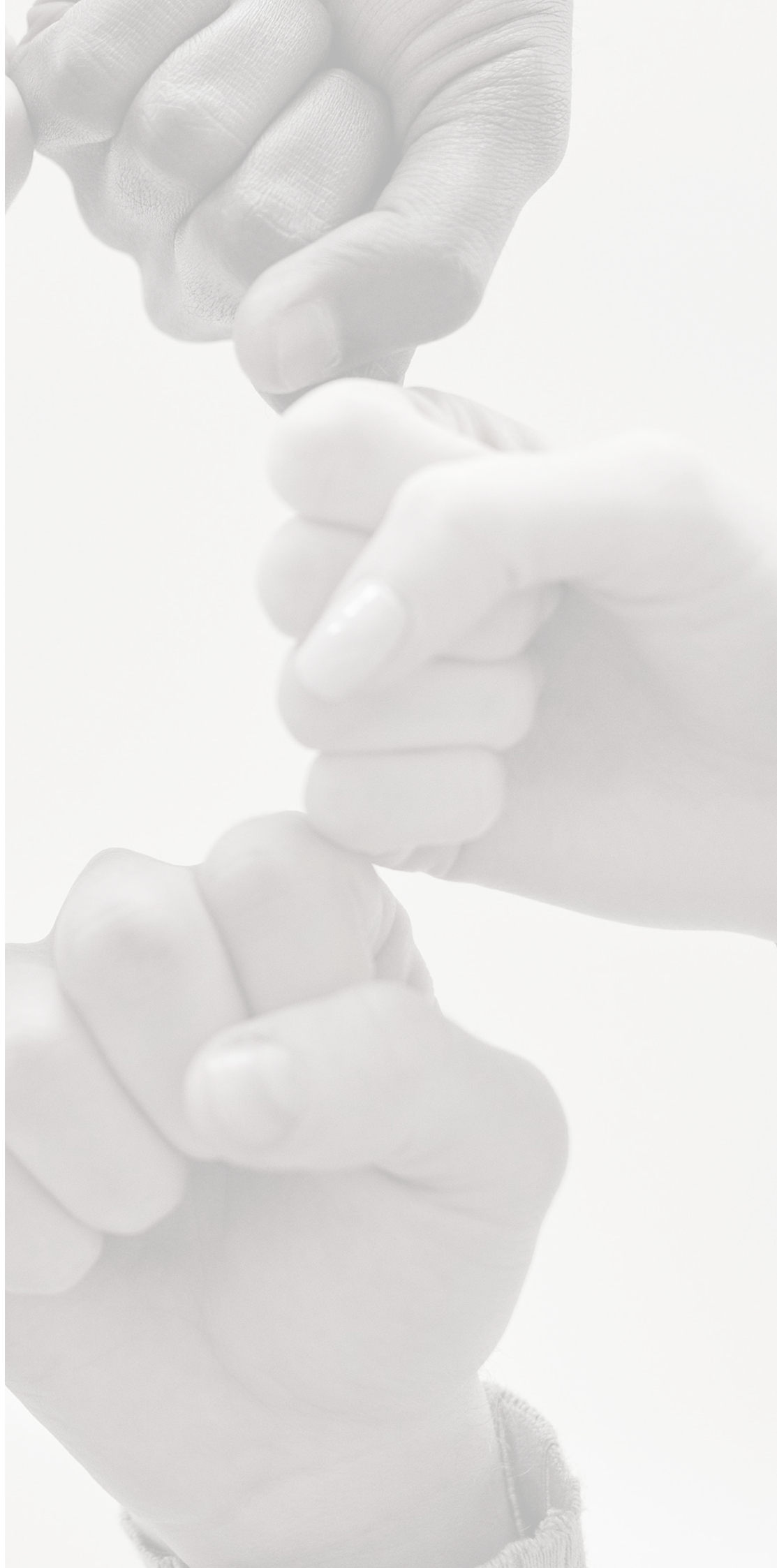
Date: June 11, 2023

Time: 4:00 PM

Duration of Discussion: 1 Hour and 40 minutes

Discussion:

1. Parents of infants with life-threatening intersex variations are not advised properly about the conditions faced by their children. Some parents are told that their child could die within a week but no further support or information are provided.
2. Parents of intersex children have to travel immediately to Manila just to seek medical treatment for their child. Upon arrival, they are constantly referred to different hospitals indicating a lack of expertise on this matter and a lack of system which could improve access in these times of emergencies
3. Medicines to treat the associated side effects are very rare and expensive. They are monopolized by a single pharmaceutical group and middle-men are also involved in the delivery.
4. Access to medical tests are still concentrated in Manila and are very expensive. If there are available clinics in provinces, services are slower than usual since they would have to send samples to Manila as well.
5. The right to privacy of their children are often compromised due to the lack of sensitivity of health service providers
6. It is a struggle to get PWD IDs for their children despite the inclusion of CAH in the Rare Disease Act



Intersex Asia is an autonomous regional network of intersex-led organizations and individuals from Asian countries that work to support, educate, and advocate for the rights and lives of intersex individuals as well as raise awareness on human rights violations and discrimination faced by intersex communities. It envisions a world where the beauty of intersex people is celebrated, intersex persons can love themselves, and intersex people grow together as a community. It seeks to create a space for intersex people where they can come forward and act as a stakeholder of the global intersex rights movement.



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