

Transgender Europe – Intersex Policy

Introduction

TGEU's mandate is defined as working toward a Europe where every person can live freely without interference in respect to their gender identity or gender expression. This policy is meant to guide TGEU's work in the field of intersexuality, and also inform intersex activists and allies of TGEU's position.

At the 3rd European Transgender Council in Malmö in September 2010 the TGEU strategic organizational development workshop asked the TGEU Steering Committee to facilitate the formulation of a position on intersexuality. In order to know the level of engagement of its members, TGEU sent out a questionnaire, the results of which led to conclusions below.

Most pressing issues

According to the TGEU members who responded to our questionnaire, the following issues are the most pressing:

- **Social Realities**

Social invisibility and the lack of fact-based information in the public sphere about intersexuality were more often mentioned as problems. Also, binary structures such as gendered facilities, bathrooms etc. were perceived as posing practical difficulties for intersex individuals.

- **Health Care**

The medical sector was seen as very problematic due to normalizing medical practices, including non-consensual and cosmetic surgeries, especially on infants. At the same time, competent and transparent health care provision based on informed consent for intersex individuals was said to be severely lacking.

- **Legislation**

In the area of law, the lack of explicit non-discrimination provisions, and transparent and accessible gender recognition procedures (change of ID Documents) for intersex people, as well as the possibility for intersex people who identify outside the gender binary to obtain non-gendered identification documents, were voiced as concerns.

- **Peer Support & Self-Organization**

In view of the above it was said that intersex people need support structures and community-based organizations providing peer support, peer-to-peer counseling, and advocacy to advance intersex rights. However, funding for such structures was said to be completely lacking.

- **Request for Support**

The respondents were asked what kind of support would help improve or facilitate their work on intersex issues. The overwhelming majority answered that they needed more information on the topic, as well as advocacy tools to use with policy makers and contact with intersex organizations and/or individual activists.

TGEU members also mentioned that they needed access to funding and for states that have succeeded in achieving improvements in the law to participate in sharing best practices.

Conclusions from the survey

At the time of the survey, only a small number of member organizations had the self-declared legitimacy to work on intersex issues. This means that there is no legitimate basis in the membership for rightfully considering an extension of the TGEU-mandate to speak on behalf of intersex people and to voice intersex issues unless it is in direct cooperation with intersex organizations. Most respondents either already worked on intersex issues or expressed the wish to do so. While there is a great deal of interest, there is also a lack of knowledge and resources, such as lobbying tools and contacts with intersex organizations.

The eagerness of transgender organizations to assist with intersex issues may also bear some risks. It is important that these organizations not dominate the discourse on intersex issues since the comparatively young intersex movement has, for the moment, fewer resources and fewer opportunities to voice their demands.

It is particularly important to note that advocacy by trans organizations without a legitimate mandate on intersex-specific issues might be perceived as acting in a patronizing fashion.

On the other hand, trans organizations already work in areas that have been identified as important for intersex people. Cooperation, mutual support, and – most of all – a reflective approach can yield fruitful results for both the intersex and for the trans communities. Some examples of beneficial cooperation: when advocating for access to respectful and non-pathologizing health care services based on informed consent; producing fact-based representation and information for the public; obtaining quick, accessible and transparent procedures for changing/obtaining civil status documents; and securing funding for community-based advocacy and support structures.

Trans and intersex people: similarities and differences

The diversity among trans and intersex people is large and while some intersex people share certain experiences common to trans people, others might not. As a consequence, trans and intersex issues overlap in some areas while in other areas they inhabit very different, and sometimes contradictory, realities.

The day to day discrimination, violence, and social denial of existence that intersex people

face take on very different forms. However, almost all of these mechanisms of social exclusion share a common root cause: the two gendered structure of our society. The same is true for the discrimination, violence and social exclusion trans people face in their everyday lives. The fact that European societies think of both gender and sex in terms of two mutually exclusive categories which cannot be changed and are defined by the body of the person infringes heavily on the rights of both intersex and trans people.

Both trans and intersex people are pathologized, but the mechanisms of pathologizing are different. Trans people are deemed to have a pathological mental health condition, while intersex people are seen as having an abnormal and incorrect the body. The consequences are different for trans and intersex people, though both share the common experience that the medical establishment holds the power to define who is trans or intersex, and holds the power to define what is considered suitable treatment. In the case of intersex people, this leads to unnecessary and irreversible body normalizing operations in early childhood. For trans people, it leads to a denial or sanctioning of access to transition socially and physically. A related issue is the fact that many adult intersex people are kept unaware of the surgeries perpetuation upon them as children without their knowledge or consent, with medical files being sealed or unavailable.

On an individual, level there is some overlap between individuals in the trans community and the intersex community. As a matter of fact, some trans people at some point in their lives find out that they are intersex. Similarly, some intersex people identify as trans.

However, it needs to be acknowledged that many intersex people – in fact, probably a majority –do not consider themselves part of the trans community, let alone the wider LGBT community. Moreover, intersex issues have been, and to some extent continue to be, misused to argue for the benefit of trans or LGB people. This is all the more regrettable as the trans community has long suffered being patronized and spoken for by LGB groups, instead of being empowered to represent itself. Although these are crucial issues, there is also genuine empathy and feelings of solidarity within the trans community toward intersex people, which provides common ground for cooperation.

Finally, it is vital to understand that while for many trans people being trans is a question of gender identity, the situation is more diverse for intersex people. Intersexuality is not necessarily a gender identity and, hence, should not be thought of exclusively in terms of gender identity. Intersex organizations advocate for the use of the terms bodily diversity or intersex status.

Intersexuality in the international human rights framework

Intersex issues are explicitly addressed almost nowhere in the international human rights framework. Recent developments, however, suggest that this is about to change. One of the few documents where intersexuality is mentioned is the 2013 report of the UN Special Rapporteur on Torture, which describes non-consensual genital operations on intersex infants as torture.¹ Also, in 2008, the Committee on the Elimination of Discrimination against

¹http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf

Women (CEDAW) addressed intersex issues in its request to the German government to begin a dialogue with intersex imitates.

Intersex issues have not yet been much on the radar of policy and decision makers. In order to argue for the human rights of intersex people, one consequently has to apply general human rights frameworks such as the right to a life in dignity (Art 1 UDHR; European Charter of Fundamental Rights), the right to be free from torture, and from cruel, inhuman or degrading treatment (Art. 5 UDHR; Art. 3 ECHR) or the right that no one may be subjected to a medical intervention without their free and informed consent (Art. 5 Convention on Human Rights and Biomedicine). The landmark document supporting human rights for LGBT people, the Yogyakarta principles, is surprisingly silent about intersex issues as it only speaks about sexual orientation and gender identity.

Legislation on a EU level does not address intersex issues at all. The Council of Europe Explanatory Memorandum² to the Committee of Ministers' recommendations to combat discrimination on grounds of sexual orientation and gender identity³ advises that "no child has his or her body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity, unless such medical interferences are necessary for other health reasons."

Lastly on October 3, 2013 the Parliamentary Assembly of the Council of Europe adopted Resolution 1952 (2013) "Children's right to physical integrity"⁴ calling for an end to genital mutilation in children and called upon member states to "ensure that no-one is subjected to unnecessary medical or surgical treatment that is cosmetic rather than vital for health during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to persons concerned, and provide families with intersex children with adequate counseling and support."

The picture hardly improves when looking at a national level. To our knowledge only Germany and Finland protect intersex people from discrimination in employment in their national antidiscrimination legislation, and Scotland is the only country in which hate violence on grounds of intersex status is considered an aggravating factor because intersexuality is included within the meaning of transgender identity. Since January 2014, Norway protects intersex people in all aspects of life, except for family life, in their antidiscrimination legislation.

In recent years, the situation has been improving. National ethics commissions in Switzerland⁵ and Germany⁶ addressed the problem of so-called gender conforming medical interventions in early childhood. They expressed the need to provide a legal framework

² Explanatory Memorandum <https://wcd.coe.int/ViewDoc.jsp?id=1570957>

³ Text of the Recommendations www.coe.int/t/dg4/lgbt/Documents/RecCM2010_5_EN.asp

⁴ Resolution 1952 (2013) <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20174&lang=en>

⁵ Intersex Statement of the Swiss Ethical Commission (2012) http://www.nek-cne.ch/fileadmin/nek-cne-dateien/Themen/Stellungnahmen/NEK_Intersexualitaet_De.pdf

⁶ Website of German Ethical Commission on Intersex (2012) <http://www.ethikrat.org/themen/medizin-und-pflege/intersexualitaet>

outside the gender binary and highlighted the need for governmental financial support for intersex organizations and peer-to-peer counseling.

Outside Europe, the Australian senate produced an excellent report, “Involuntary or coerced sterilization of intersex people,”⁷ that condemned the violation of the human rights of intersex individuals.

Position of Transgender Europe and Conclusions

TGEU stands in solidarity with the human rights struggle of the intersex movement, strongly supports the demands to address the human rights of intersex people as formulated by the Third International Intersex Forum in Malta 2013 (see Annex), and will raise awareness regarding these issues wherever possible.

TGEU takes a strong position against the exclusion and marginalization of intersex people in the trans community. We commit ourselves to fighting discriminatory attitudes against intersex people within the trans community and to raising awareness among our member organizations and the wider trans community about intersex issues and the potential misuse of intersex issues by LGBT organizations.

Transgender Europe has some individual intersex members and organizations working on intersex issue. However, this does not constitute a legitimate mandate to speak on behalf of intersex people and their organizations. TGEU joins forces with intersex groups and organizations to advocate for a more just society and to tackle the widespread discrimination, violence, and denial of existence experienced by intersex people. Wherever possible, TGEU provides opportunities for intersex activists' engagement with policy makers and stakeholders directly.

TGEU welcomes the participation of intersex activists at our events to facilitate mutual enriching dialogue and foster cooperation. We look forward to working cooperatively with our partner organization OII Europe, and other intersex organizations and imitates, wherever it can be beneficial for us or for our allies.

Adopted at the TGEU General Assembly on May 3 2014 in Budapest, Hungary

⁷ Australian Senate *Involuntary or coerced sterilisation of intersex people in Australia*
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/index

Annex: Third Intersex Forum, Malta December 2013

Public Statement by the Third International Intersex Forum

Between 29 November and 1 December 2013, the Third International Intersex Forum, supported by ILGA and ILGA-Europe, took place in Valletta, Malta. This event brought together 34 activists representing 30 intersex organizations from all continents.

Preamble:

We affirm that intersex people are real, and we exist in all regions and all countries around the world. Thus, intersex people must be supported to be the drivers of social, political and legislative changes that concern them.

We reaffirm the principles of the [First](#) and [Second](#) International Intersex Forum and extend the demands aiming to end discrimination against intersex people and to ensure the right of bodily integrity, physical autonomy and self-determination.

Demands:

- To put an end to mutilating and ‘normalizing’ practices such as genital surgeries, psychological and other medical treatments through legislative and other means. Intersex people must be empowered to make their own decisions affecting own bodily integrity, physical autonomy and self-determination.
- To put an end to genetic diagnosis, pre-natal screening and treatment, and selective abortion of intersex fetuses.
- To put an end to infanticide and killings of intersex people.
- To put an end to non-consensual sterilization of intersex people.
- To depathologize variations in sex characteristics in medical guidelines, protocols and classifications, such as the World Health Organization’s International Classification of Diseases.
- To register intersex children as females or males, with the awareness

that, like all people, they may grow up to identify with a different sex or gender.

- To ensure that sex or gender classifications are amendable through a simple administrative procedure at the request of the individuals concerned. All adults and capable minors should be able to choose between female (F), male (M), non-binary or multiple options. In the future, as with race or religion, sex or gender should not be a category on birth certificates or identification documents for anybody.
- To raise awareness around intersex issues and the rights of intersex people in society at large.
- To create and facilitate supportive, safe and celebratory environments for intersex people, their families and surroundings.
- To ensure that intersex people have the right to full information and access to their own medical records and history.
- To ensure that all professionals and healthcare providers that have a specific role to play in intersex people's wellbeing are adequately trained to provide quality services.
- To provide adequate acknowledgement of the suffering and injustice caused to intersex people in the past, and provide adequate redress, reparation, access to justice and the right to truth.
- To build intersex ant-discrimination legislation in addition to other grounds, and to ensure protection against intersectional discrimination.
- To ensure the provision of all human rights and citizenship rights to intersex people, including the right to marry and form a family.
- To ensure that intersex people are able to participate in compete sport, at all levels, in accordance with their legal sex. Intersex athletes who have been humiliated or stripped of their titles should receive reparation and reinstatement.
- Recognition that medicalization and stigmatization of intersex people result in significant trauma and mental health concerns.
- In view of ensuring the bodily integrity and well-being of intersex

people, autonomous non- pathologizing psycho-social and peer support be available to intersex people throughout their life (as self-required), as well as to parents and/or care providers. In view of the above the Forum calls on:

- International, regional and national human rights institutions to take on board, and provide visibility to intersex issues in their work.
- National governments to address the concerns raised by the Intersex Forum and draw adequate solutions in direct collaboration with intersex representatives and organizations.
- Media agencies and sources to ensure intersex people’s right to privacy, dignity, accurate and ethical representation.
- Funders to engage with intersex organizations and support them in the struggle for visibility, increase their capacity, the building of knowledge and the affirmation of their human rights.
- Human rights organizations to contribute to build bridges with intersex organizations a basis for mutual support. This should be done in a spirit of collaboration and no one should instrumentalist intersex issues as a means for other ends.