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Applying A Human Rights-Based Approach to Healthcare

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Abstract

Human rights are discussed in many areas but not as often is it discussed in light of medical care and services. When a government announces "rights-based approach to health care for intersex children and young people", then question becomes what does such a statement mean? Anecdotally, medical professionals often dismiss human rights as though they are not relevant to them in the general work in the general day-to-day medical practice. However, that is not necessarily the case as noted in the case study of ill-treatment of intersex people in the medical setting. This is a statement intersex advocates often hear. To understand what the human right to health is, the Article expounds first the foundation of human rights and then goes on to explain the right to health. The Article then sets out the application of human rights in the health care setting and the obligations of the state and the health sector and industry in general with the key elements of respect, protect and fulfil. Without the right to health, intersex people will fail to develop in dignity, and thus, a violation of human rights by both the health profession and the state who holds ultimate responsibility.

Keywords: Human rights; Rights-based approach; Right to health; Intersex people; Ill-treatment

Introduction

Intersex people are geno-diverse and/or pheno-diverse, that is they have chromosomes, hormonal systems, genitals, reproductive organs, secondary sex characteristics and thus fall outside the common definitions of either male or female sex [1,2]. Intersex people should not be confused with sexual orientation or gender identity as doing so often leads to further prejudice and discrimination against Intersex persons [3]. Traditional terms, such as the word hermaphrodite, come with different issues such as the way science has skewed the meaning (self-reproduction) and the fetishisation of the 'hermaphrodite bodies' [4]. Though intersex people have been recognised for thousands of years as 'hermaphrodites' in Western society, they have not always been accepted socially or legally. Some intersex people and intersex advocacy organizations refer to intersex people as people with variations of sex characteristics. For this article, intersex people will be used to refer to the population as a whole.

In modern medical spaces since the nineteenth centuries, professionals have tried to 'humanely' fix the anomaly to conform their bodies to the two-sex model [4,5]. Since the 1950s, Dr. John Money and Dr. Robert Stoller established new treatment protocols through the institution of gender to support the rehabilitation of these bodies into the social orders of male and female [6-9]. Since 2006, a consensus statement renamed 'hermaphrodite' as 'disorders of sex development' with associated diagnostic means and multi-disciplinary teams to "fix" intersex bodies as assigned males or females [10]. The medical protocols and treatment regimes on intersex people have been extremely paternalistic and have had physical, psychological, and social impacts on each

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intersex person's life, and has also impacted on them collectively [11]. It is the existence of intersex people's being and their bodies that has led to the risks or experiences of stigma or harm [12].

In May 2022, the New Zealand Government announced in the budget that money would be put aside for a "rights-based approach to health care for intersex children and young people" over the next 4 years [13]. For many in the intersex community that was a beautiful sound, but it was also the result of many years of advocacy and work. Such announcements sound good for the communities and the advocates pushing for better healthcare and services for their community, but it leaves some interesting thoughts. What does a right-based approach mean? Is a rights-based approach the same as a human rights-based approach to health care? How can human rights apply in a healthcare setting?

These questions are important as advocates are anecdotally told by medical professionals that human rights ("HR") have nothing to do with health and that they are not interested in human rights. While in HR advocacy, there is a lot of discussion of the human rights to health as set out in the human rights instruments, medical professionals feel that such discussion belongs to policy makers and not those providing medical care and treatment. The aim of this article is to clearly outline the focus of the 'right to health' and how it is situated within the human rights framework. Then, this article sets out the argument that human rights, and particularly the HR to health, are applicable in the healthcare setting. As such it will set out what a human-rights-based approach to health care is and how it could be applied in healthcare setting.

Case Study: Violating Human Rights within a Healthcare Setting

Although it would be easy for medical professionals to dismiss human rights and set the concepts apart for health policy makers, there are some good illustrations to illustrate why they should be concerned about HR. An example of a human rights implication is where ill-treatment inhibits the right to health and the development of personality in dignity.

To set out an example, the United Nations Special Rapporteur on the torture and other cruel, inhuman or degrading treatment or punishment recognised that intersex people were had genital-normalizing surgeries performed on young children under the guise of so called 'reparative therapies. The report then stated: "Children who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that of their parents, "in an attempt to fix their sex", leaving them with permanent, irreversible infertility and causing severe mental suffering" [14]. The Special rapporteur then called on all states to:

"repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, 'reparative therapies' or 'conversion therapies', when enforced or administered without the free and informed consent of the person concerned. He also calls upon them to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups" [14].

This statement indicates that any healthcare treatments could reach the threshold of ill-treatment or potentially even that of torture.

Though this may appear extreme, it is more commonly performed than assumed. Around the world these treatments are still being performed. Furthermore, these medical treatments and surgeries are not performed for life-saving or emergency treatment of health, but for the social emergency to ensure the binary structures of society [5,11]. Due to medical and social beliefs and practices reinforcing the sex binary of male and female, intersex people still face medical interventions to force their bodies into male or female constructions through gender [15].

The Human Right to Health

To understand the 'right to health' it is important to begin with the foundations of human rights. The Second World War illuminated the point that liberal rights regimes were insufficient in preventing the atrocities of the disregard for the human person and their natural rights [16]. Humanism facilitated a benevolence over persons whether they consent to such an action or not [11]. The rights regimes, the bill of rights', were easily overridden, even by positivist legal means, and led to atrocities and violations of human rights [17], enabling even today the situation of the case study above.

To prevent such atrocities and limitations of liberal rights, the United Nations (UN) was established [18], as a strategy for peace and a protection of all humans including minorities. The Preamble of the UN Charter stated: "We, the peoples of the United Nations, determined: ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, ..." [18]. This was cemented through the UN Universal Declaration of Human Rights (UDHR) in 1948,' and its associated covenants of International Covenant of Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR). The "dignity and worth of the human person" is the foundation, as well as the source and legitimacy of the UN and the human rights instruments noted above [19-22]. The equal and inalienable rights of all members of human society is for the free and full development of human personality in dignity [19,23]. These instruments are supported by other human rights instruments including the Convention on the Rights of Persons with Disabilities (CRPD), the United Nations Convention on the Rights of the Child (UNCROC), and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to name a few.

It is within such a context of the foundation of human rights that it is possible to understand the 'right to health' as it is often called. The UDHR first noted the notion of health in Article 25(1):

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including

food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

Health and well-being were connected with an adequate standard of living and not focused only on health and health services or the freedom from illness. As Asbjørn Eide noted regarding the drafting, the right to health extends well beyond having a right to medical care and services and is part of the core elements of the core support for development including adequate food, nutrition, clothing, and housing [24]. It extends to a much wider sense of well-being that interconnects with other rights and freedoms, in particular, the other social, economic and cultural rights. Health and well-being are a barometer of a standard of living required to enable the free and full development of personality.

The right to health was further clarified in Article 12 of the ICESCR:

"(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."

Although there were attempts to introduce language such as social well-being and moral well-being, at the end of the drafting process these were not accepted as they were considered either unclear or inappropriate for the Article [25]. Most nation states focus on part 2 of Article 12, but the key to understanding the Article is in part 1: "the enjoyment of the highest attainable standard of physical and mental health."

Moreover, the World Health Organisation ("WHO") was established in the late 1940s. The WHO was responsible for the "state of complete physical, mental, and social wellbeing and not merely the absence of disease or infirmity" and "the highest attainable level of health is the fundamental right of every human being." [26]. Signatories agreed to the right to "the enjoyment of the highest attainable level of health is one of the fundamental rights of every human being; in doing so we affirm the dignity and worth of every person, and the equal rights, equal duties and shared responsibilities of all for health" [27].

The right to health cover freedoms and entitlements. The freedoms include the right to the Programme of Action of the International Conference on Population and Development held at Cairo in 1994, as well as the Declaration and Programme for Action of the Fourth World Conference on Women held in Beijing in 1995 contain definitions of reproductive health and women's health, respectively. control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation [28,29]. The freedoms are clearer in that human beings should not have their dignity and being interfered with in relation to these freedoms. The entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health." [28,29]. These entitlements create conditions favourable to the achievement and maintenance of the highest attainable level of health while the negative right provides adequate protection of health to the right to equal access to health care [27]. Entitlements are more subjective and open to issues of resource availability.

Furthermore, the right to health must be accompanied and supported by the realisation of other inalienable rights. For example, the right is interconnected with other rights such as food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement [29,30]. All human rights are universal, indivisible and interdependent and interrelated and are to be implemented in a fair and equal manner and evenly considered and applied [30].

A clear understanding of the right to health can also be seen in comments from the Committee on the Rights of the Child. In referring to Article 24 of the United Nations Convention on the Rights of the Child, the Committee has clearly stated that it is:

"…an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinants of health. A holistic approach to health places the realization of children's right to health within the broader framework of international human rights obligations." [31].

The Committee noted that the interpretation on the right to health is based on the importance of "approaching children's health from a child-rights perspective that all children have the right to opportunities to survive, grow and develop, within the context of physical, emotional and social well-being, to each child's full potential" [31].

Indigenous rights also have clear implications on the interpretation on the 'right to health'. UNDRIP states that Indigenous peoples have their own understanding and application of a system of well-being:

"Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples, …"

UNDRIP makes it clear that nothing should inhibit or be harmful to "the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment" [32]. The Declaration states in Articles 43 "The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world." Improved connections with the spiritual world (may be cultural or religious) improves well-being [33].

The right to health extends well beyond what is traditionally referred to as healthcare and its services. It encompasses what is required to free and fully develop into human person in dignity. To use the examples from the Conventions discussed, the 'right to health' is a broad right focused on development in well-being from birth through to death. It is not focused on illness or disease, but states that provisions to provide for these should be part of the systems as far as practically possible and reach their human potential. It requires the respecting of dignity or autonomy as persons capable of planning and plotting their future [34,35]. Society can enhance or inhibit well-being and one's becoming, but when it encourages one's unique becoming it strengthens the tie which binds every individual and makes it infinitely worth belonging to [36]. Becoming is a spiritual journey that occurs in solidarity with others [37]. As such, the extent of one's well-being and potentiality is a barometer of a flourishing society.

Applying Human Rights in Healthcare

Thus, a human rights-based approach to health care is interconnected with other rights to improve the health and well-being of individuals and the community will involve the realisation of all the rights as practically possible. The purpose is to enable the free and full development in well-being of personality in dignity. Rights-based approaches establish a duty of governments to act according to principles of participation, equality, non-discrimination, and accountability especially for minority populations [38].

While the main responsibility falls on the state for human rights, medical professionals and those working in the sector still have a role to play to protect and uphold human rights. For that reason, it is wrong for medical professionals to consider that human rights do not apply to them. As they provide healthcare, they are accountable to the state for how they perform healthcare. As providers of healthcare or health services for the benefit of the patient, such care still demands scrutiny from a human rights perspective [39]. As Cohen and Ezer state: "Patient care is a discrete and important aspect of the right to health that merits attention and scrutiny as a human rights issue" [39]. The scrutiny examines from a beneficiary perspective to identify and address their vulnerabilities [39]. In saying that medical professionals have a part to play in enabling the development of human personality in dignity and protecting against violations of a person's dignity and inhibiting the development. As Paul Hunt stated: "Health policymakers and practitioners who ignore this fundamental human right are failing to use a powerful resource that could help to realise their professional objectives" [40]. Referring back to the violation of right to health in the case study, medical professionals are the ones performing the ill-treatment on intersex infants and young people. They are performing the treatment according to their 'standards of care', not the state's code, and therefore, they must take responsibility for the violation of the basic principles of human rights of intersex people.

State Responsibility

Ultimately, it is the nation state that holds ultimate responsibility when it comes to human rights [20,21]. First, they are responsible to the public to ensure systems are equitable and fair. Second, they are accountable to the international human rights bodies that their systems are compliant to what they have signed up to within what would be expected for the resources available [29].

Domestically, states are responsible for providing health systems that can achieve better health through the respect, protection, and fulfilling of rights. That is, they have responsibility for preventing rights violations, and creating policies, structures, and resources that promote and enforce rights that improve health and well-being of their citizens [26]. This responsibility extends beyond the provision of essential health services to tackling the determinants of health such as, provision of adequate education, housing, food, and favourable working conditions which are human rights in themselves and necessary for health and well-being [26]. States are obligated to progressively realise people's rights to health as part of justice, professional ethics, and ensuring effective and sustainable health systems [41], and to investigate the effects on the main determinants of health and whether the fulfilment—or absence— of these has supported the development of personality [26]. The core components of rights-based approaches include examining the laws and policies under which programmes take place; systematically integrating core human rights principles such as participation, non-discrimination, transparency, and accountability into policy and programme responses; and focusing on key elements of the right to health—availability, accessibility, acceptability, and quality when defining standards for provision of services [26].

Yamin highlights that the "raison d' etre of the rights-based approach is accountability" [42]. The state is accountable and has an 'obligation to protect' individuals from any ill-treatment that could affect an individual's integrity, dignity, well-being or other human rights. The 'obligation to protect' obliges States to take all necessary measures to prevent others from violating individuals' integrity, dignity, well-being or other human rights. 'Obligations to (assist and to) fulfil' require States to take all necessary measures to (progressively) ensure for each person within their jurisdiction opportunities to obtain satisfaction of their needs, particularly those needs recognised in human rights law. The right to health thus creates corresponding obligations for States which they are due to respect, protect and fulfil [27]. General Comment 14 imposes three types or levels of obligations: the obligations to respect, protect and fulfil. The obligation to respect requires states parties to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to protect requires states parties to take measures that prevent third parties from interfering with article 12 guarantees. The obligation to fulfil requires states parties

to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health." [28,29].

Respect

The first key element in applying human rights is the notion of respect. Respect is refraining from or prohibiting any interference, directly or indirectly, with the enjoyment of the right to health [29]. Respect indicates there is no interference with the determining of who one is when providing health services. Socially constructing the type of society through medicine, that is a binary of male or female, is not a sufficient reason to interfere with as person's human rights [5,11]. The denial of intersex existence as personhood apart from them as a person with abnormalities or pathologies as a disorder of sex development in urgent need of fixing violates their right to health by inhibiting their development and their dignity.

Furthermore, there is a need to protect privacy that would enhance the right to health. Privacy here refers to the human rights, not Western understanding, Privacy involves the

"For intersex individuals, privacy intrusions can commence literally from birth, with sex reassignment surgery and hormone treatment to assign a certain sex. "Normalizing" surgery on intersex infants can impact on human rights, including the right to privacy, as it infringes the right to personal autonomy/self-determination in relation to medical treatment. Countries were reported to be responding in a variety of ways" [43].

The right to privacy, in international law provides for the dignity of the individual and their free and full development including their self-determination [44].

Furthermore, another important reason is interference could impact cultural impact. Interference with intersex people and the right to health is based on a Western model of understanding society and the body. In Aotearoa New Zealand, for example, the Treaty of Waitangi obligates the State to recognise Māori well-being and social understanding of life [45]. Performing ill-treatment on Māori intersex children not only interferes the child's right to health, but also their cultural being which also violates the Treaty of Waitangi. Thus the right to health cannot be seen in isolation from rights to indigeneity, self-determination, culture, language, land, and the natural environment [41].

Lastly, is the inhibiting of the right to health by ill-treatment, or torture. Sex-normalising treatment in the vast number of cases are not required apart form for social reasons [5,11]. It is important to note that some 'intersex traits' do have associated health issues and some of these issues can be life-threatening. However, sex-normalising surgeries are not such treatments. Without the person's consent denies their self-determination. Under those factors, it rises to the bar ill-treatment under int as noted in the case study above [44,46].

Protect

The second key element is the to protect which "requires states parties to take measures that prevent third parties from interfering with article 12 guarantees" [29]. The right to health is more than a negative right, it is freedom from interference. These freedoms are important, but only part of the development of human personality and still may not enhance dignity. To protect also requires positively instigating measures including training and education to overcome issues of inequity and discrimination. This element asserts that states must put in protections so that third parties, such as medical professionals in this case, to not interfere with the right to health that could inhibit the free and full development of personality in dignity.

The Western history has led to removing the possibility of life as an intersex person. This history has led to health professionals arguing that they are doing the treatment for humane reasons – to help intersex people live a comfortable social life forced into the heteronormative world. Instead of the humane and appropriate health care expected, patients encounter a variety of abuses that affront basic human dignity and jeopardize health outcomes (p.8) [39]. Although there may be some associated health issues that some intersex people made require medical support for, genital-normalising surgery and treatments is not urgent nor life-threatening. Such 'humane' considerations, irrespective of the intent, continues the discrimination that intersex people face and impacts on their development in dignity. As noted in the case study above, many states still have work to do to protect, that is, implement measures that prevent interference with an intersex person's right to health. There are some states that have implemented laws to restrict unnecessary surgeries on intersex people without their consent. Malta and the Australian Capital Territory are some examples. Many have not done so or are attempting other means instead of legislation, for example by creating good practice guidelines. Some states, such as Aotearoa New Zealand, still enable medical professionals to legally perform such treatments in legislation as in the Crimes Act 1961 s204 prohibits female genital mutilation, but still permits medical professionals to perform genital-normalising surgery.

The state is obligated to protect individuals from being socially constructed for racist and sexist means. Gender was such an institution to minimise intersex to a 'health issue to be fixed' so that their being could be socially malleable to their assigned male or female role, orientation and identity [7-9,47]. The institution is at its foundations racist and sexist to remove sense of personhood and enforce a Western social ideal and thus violates the core principles of dignity and equality of human rights [7,9,48,49], and continues to impact on the health and well-being of intersex people. Intersex people need protection as to who they are or cultural presentations of their intersex being, and not constrained within the medicalised creation of gender to erase, or at minimum minimize their personhood.

There needs to be more oversight in the bodies performing treatment and surgeries on intersex people. Standards, protocols and oversight are based on what the profession deems appropriate. There is little input, if any, from the community to ensure that it is appropriate and enhances the right to health for intersex people and enables them to develop in dignity. The protections need

stronger and enforced free and informed consent requirements to protect the autonomy of the person and their integrity of being. For example, the In Aotearoa New Zealand the law provides that full and informed consent is must be provided before any medical treatment including surgery [50]. However, in reality medical professionals have been careful in what information is disclosed and not informing all information that the person concerned what desire to know before making a decision [51].

Lastly, there is protection form discrimination and structural barriers to enable equality. The interpretations of equality and non-discrimination necessarily reflect deeply held understandings about justice and power and about what being fully human really means [52]. The Special Rapporteur on torture recognized the particular vulnerability of marginalized groups to torture and ill treatment in health settings, citing structural inequalities, such as the power imbalance between doctors and patients, exacerbated by stigma and discrimination." [39]. The last two decades have seen rapid advances in knowledge around health inequities, that is, avoidable, remediable, and unfair differences in health status between different populations, both within and between countries [38]. As mentioned, gender is the institution based in racist and sexist biases based in a Western construction continuing to harm intersex people. It enhances shame and stigma that become internalised as part of young people's identity [53-56].

Fulfil

The third key element of a right-based approach is 'to fulfil'. This element "requires states parties to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health" [29]. Heath services, as well as medical research, fail to fulfil this element for intersex people [57].

To begin with, the realisation of this right is to ensure the provision of health services. Health care is the provision of services "for the purposes of promoting, maintaining, monitoring, or restoring health" [39]. Healthcare is defined in the General Comment on the right to health as "a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health . . . (It) is an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health." [41]. Human rights acknowledge that health services are limited in their resources and services. There is acknowledgement that health support and services are to advance in line with the capability of that nation state. To realise the right to health, a state party contains particular characteristics: availability, accessibility, acceptability and quality of healthcare services and facilities.

"Availability" means that the states party has sufficient facilities and services for the population given the country's state of development. Services include those that affect the underlying determinants of health, such as safe and potable drinking water. "Accessibility" to health care facilities and services includes the four dimensions: non-discrimination, physical accessibility, economic accessibility (affordability), and information accessibility. "Acceptability" means that services and facilities must be respectful of medical ethics and culturally appropriate as well as being designed to respect confidentiality and improve the health status of those served. "Quality" means that services must also be scientifically and medically appropriate and of good quality" [28,29].

These availability, accessibility, acceptability, and quality of health (broadest sense) services are important to the realisation of human rights inclusive of the right to health. However, the right to health is far more expansive than the traditional healthcare services. It should be applied across disciplines, communities and cultures (and, indeed, with sectors outside health) for developing, delivering and evaluating health-related policies, services and programs to ensure they are robust, sustainable, effective, and equitable [41].

Another important aspect to the realisation or fulfilment of this right is participation in the policy making and provision of services to the community. A rights-based approach supports the facilitation of participation of advocacy support in policymaking and governance [38]. Participatory governance and decision-making will aid in the policy arena of health care and various communities.

Rights-based approaches can support both measurement of health inequities and disaggregation of data, by supporting the right of disadvantaged groups to be counted. Identifying whether claims to human rights have been fulfilled, or whether states are discharging their obligations appropriately, requires not only disaggregation of data but also the development of indicators for the implementation of policies and monitoring their impact. Here, rights-based approaches face similar demands and challenges as policy makers executing policy to address the social determinants. Indicators and benchmarks for rights-based approaches to health systems need to be developed further within health sectors and translated to other sectors and disciplines essential for health equity [38]. While some states are slowly adapting census regulations and policy to include intersex, many still do not. Furthermore, the National Health Index (NHI) number in Aotearoa does not include sex, let alone intersex people. The NHI number is based on gender [58].

The problem is healthcare and health services are socially determined [38], as Foucault has noted as such in many of his works [59,60]. As such, the services and delivery of them is based on these social constructions and their underlying foundations. The case study occurs due to the social construction of health based on gender and not focusing on just the health needs.

Conclusion

The human right to health or well-being is broader the access to health services. Although these are important, they must be understood within the overall basis of human rights to be applied in a rights-based approach. That is, health and human rights are integrally and inextricably interlinked. Respecting, protecting and fulfilling people's rights to health is closely associated with people's right to development, and leads to flourishing lives [41,61].

The case study highlights that in some cases, health services are provided, but for the wrong reasons and often without the consent of the person concerned. Performing surgery to remove personhood and assigned another 'identity' is a violation of human rights. Intersex people may need the support of health professionals and the health system for associated health issues, but being an intersex person is not a health issue. The viewing of their body an anomaly in need of fixing to make them male or female violates their dignity and their ability to freely and fully develop as a human being.

The basic principles of respect, protect and fulfil are important for a rights-based approach to health and well-being that can lead to development and flourishing lives [41]. Basing a health system of 'two genders' as that is deemed socially appropriate and violating intersex people's bodies and being to ensure that occurs violates human rights at its very foundations. Therefore, performing ill-treatment for such a case with impunity for state and non-state actors is a violation of human rights and inhibits the right to health. It inhibits the ability for intersex children to freely and fully develop to their full potential.

The human rights instruments recognise that resources are limited, and in developing countries they might be scarce. As such it is a right that is to be realised according to the resources available. No country may have the same resources and will be assessed according to its availability including people and facilities.

There are some approaches to the measurement of a rights-based approach being developed as the former Special Rapporteur called for such as "indicators, benchmarks, impact assessments, budgetary analysis" and other measures" [38]. These need more work to ensure it encompasses the broader basis of the right to health.

Intersex people as noted in the case study are continuing to have their right to health inhibited and violations of their human rights to enforce their status within the predominant Western male-female society. That is not to say they do not have associated health issues, and some do, but making their existence a health issue violates their human rights and leads to ill-treatment when it is not free and informed consent of the person concerned. They need the health professionals and services to respect, protect, and fulfil their right to health and well-being.

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Conflict of Interest

No conflict of interest.

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