The protection of intersex persons by public international law

Introduction
Preliminary thanks

- University of Huddersfield
- DILCRAH (French LGBT governmental body)
- GISS | Alter Corpus
1. What are we talking about?

- Intersex: people who have sex characteristics different from the general norm (corporal minority)

- Public international law
  - Public ≠ private
  - Public = law for States
  - Private = law for individual
  - International ≠ national: two different legal orders
    - no automatic application of international norms in national legal orders
    - State responsibility to enforce international norm
  - Law ≠ moral or religion
    - Definition = norms issued by official institutions (Yogyakarta?)
    - Variety of norms = soft law or hard law

- Legal protection
  - General protection through primary or secondary sources
  - Particular protection through State Liability
2. When did human rights law start to protect intersex persons?

- **Before 2009**
- No occurrence of intersex in international law
  
  (except the *Goodwin* case)
2. When did human rights law start to protect intersex persons?

- Before 2009: No occurrence of intersex in international law
- 2009: First occurrences of intersex
2009 – European Union

Fundamental Right Agency, Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States, Part II – The social situation

“20. Member States should ensure all rights to informed consent are respected in regard to procedures on intersex children. Medical associations should ensure that their members are fully informed on current trends in ethics, therapy and care for intersexual persons.”
2009 – Council of Europe

Commissioner for Human Rights. *Issue paper on human rights and gender identity*, p. 3 (introduction)

“a relatively small number of people experience problems with being a member of the sex recorded at birth. This can also be so for intersex persons whose bodies incorporate both or certain aspects of both male and female physiology, and at times their genital anatomy”
“Other status” as recognized in article 2, paragraph 2, includes sexual orientation. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.

“Health-care providers should strive to postpone non-emergency invasive and irreversible interventions until the child is sufficiently mature to provide informed consent. [Footnote 67: This is particularly problematic in the case of intersex genital surgery, which is a painful and high-risk procedure with no proven medical benefits]
2. When did human rights law start to protect intersex persons?

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<tr>
<th>Year</th>
<th>Event Description</th>
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<td>2015</td>
<td>First documents dedicated to intersex</td>
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2015 – First documents addressing intersex issues alone


- United Nations Organization, High Commissioner for Human Rights, September 2015
  - Publication of a Fact Sheet on intersex
  - Organization of an Expert meeting on ending human rights violations against intersex persons
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3. Plan of the panel

- Three examples of the protection of intersex by public international law from a French perspective
  - Right to bodily integrity (Benjamin Pitcho)
  - Right to a third sex/gender marker (Mila Petkova)
  - Right to no sex marker (Benjamin Moron-Puech)
- General thoughts on intersex and international law (Nella Truffer and Markus Bauer – STOP IGM)