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# ***Intersex Identity and Rights in Kosovo***

*A Framework for Legislative  
and Healthcare Reform*

Implemented by:



**CEL**  
CENTRE FOR EQUALITY  
AND LIBERTY KOSOVA

CENTRE FOR EQUALITY AND LIBERTY OF THE LGBT COMMUNITIES IN KOSOVA (CEL)

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# Introduction

## Definition of Intersex

Intersex is an encompassing term that defines a broad range of innate variations in physical sex characteristics. Intersex variants can appear at different times in life, or they can be concealed from a person who is born with one of them.<sup>1</sup>

Intersex individuals are those born with physical sex characteristics—such as chromosomes, gonads, or genitalia—that do not fit typical definitions of male or female. This natural biological diversity is more common than often perceived, with estimates suggesting that approximately 1.7% of the global population falls under this category.<sup>2</sup> It is crucial to distinguish intersex individuals from other gender and sexual minorities, such as transgender or non-binary persons, as their experiences and legal needs often differ. Unlike gender identity, intersex is a matter of biological variation, and intersex individuals may identify as male, female, or non-binary. These distinctions are fundamental to understanding the unique legal and healthcare challenges faced by this population.

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<sup>1</sup> InterACT (2022) Intersex Variations Glossary: People-Centered Definitions of Intersex Traits and Variations in Sex Characteristics. Available at: <https://interact-advocates.org/intersex-glossary/>.

<sup>2</sup> Blackless, M., Charuvastra, A., Derrtyck, A., Fausto-Sterling, A., Lauzanne, K. and Lee, E. (2000) 'How sexually dimorphic are we? Review and synthesis', *American Journal of Human Biology*, 12(2), pp. 151–166.

## Legal Importance

Despite this diversity, intersex individuals remain one of the most marginalized groups in terms of legal recognition and protection. In many jurisdictions, including Kosovo, the absence of specific legal provisions addressing the rights and needs of intersex individuals creates significant gaps in healthcare, civil rights, and personal autonomy. These gaps are particularly apparent in areas such as birth registration, where intersex children are often assigned a sex at birth that may not align with their future identity, and in medical procedures, where irreversible surgeries are performed on infants without consent.

Legal recognition and protection for intersex individuals are essential for ensuring their rights to bodily autonomy, informed consent, and non-discrimination. International human rights standards increasingly recognize the necessity of protecting intersex individuals from medical harm and unnecessary interventions, as well as ensuring their full access to civil and legal rights. Kosovo's legal framework, however, remains underdeveloped in this regard, leaving intersex individuals vulnerable to both institutional discrimination and social marginalization.

This paper aims to critically assess the current legal framework in Kosovo as it pertains to intersex individuals, with a specific focus on the lack of regulation concerning healthcare practices and civil status procedures. By conducting a comparative analysis with European Union (EU) member states, where intersex rights have been increasingly recognized, this paper will identify best practices and propose legal reforms that could be adopted in Kosovo. The goal is to offer concrete recommendations for improving both legal protections and healthcare provisions, thereby aligning Kosovo's approach with international

human rights principles and ensuring comprehensive rights for intersex individuals. As an organization dedicated to advancing the rights of marginalized communities, CEL Kosova seeks to highlight these issues and advocate for meaningful legal change in this area.

## Current Legal Framework in Kosovo

### Absence of Specific Legislation

Kosovo currently lacks any specific legislation addressing the rights and needs of intersex individuals, a gap that leaves this population particularly vulnerable in various domains of public life, including healthcare and civil rights. Despite international human rights standards increasingly recognizing the unique challenges faced by intersex people, Kosovo's legal framework does not yet provide the necessary protections.

While Kosovo has enacted general anti-discrimination laws, such as the Law on the Protection from Discrimination (2015), which prohibits discrimination on grounds including gender and sexual orientation<sup>3</sup>, these laws do not explicitly mention intersex individuals or their specific medical and civil rights. Discrimination against intersex persons is a particularly complex form of discrimination. Intersex organizations argue that the term 'sex characteristics' would best define a

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<sup>3</sup> Republic of Kosovo (2015) Law on the Protection from Discrimination No. 05/L-021. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10924>.

ground for protection against discrimination of intersex people.<sup>4</sup> Similarly, Kosovo's Law on Health provides general provisions on the right to healthcare but does not include any regulations that protect the bodily autonomy of intersex people, particularly in the context of non-consensual medical interventions on infants and minors. This legal vacuum creates significant gaps in protecting intersex individuals from harmful practices, including irreversible surgeries performed on intersex infants without their informed consent or the consent of their legal guardians, a situation that has been condemned by international human rights bodies such as the United Nations and the European Union Agency for Fundamental Rights (FRA).<sup>5</sup>

In addition to healthcare, the lack of specific legislation addressing birth registration for intersex individuals poses a significant challenge. Currently, there are no legal provisions that allow for flexibility in assigning gender markers at birth for intersex children. This lack of regulatory clarity often leads to the assignment of a binary gender marker (male or female) based on medical assessments, a practice that may not align with the individual's future gender identity. The rigid binary approach to birth registration exacerbates the difficulties intersex individuals face later in life, particularly when they seek to amend their legal documents to reflect their true gender identity.

The absence of intersex-specific legislation in Kosovo has profound consequences for the protection of intersex

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<sup>4</sup> European Union Agency for Fundamental Rights (2020) A Long Way to Go for LGBTI Equality: Homophobia, Transphobia, and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU. Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-lgbti-equality-1\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf).

<sup>5</sup> European Union Agency for Fundamental Rights (2015) "The fundamental rights of intersex people". Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2015-focus-04-intersex\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-focus-04-intersex_en.pdf).



individuals' rights, particularly in terms of healthcare autonomy and legal recognition. Without a robust legal framework, intersex persons in Kosovo are left without the safeguards necessary to ensure informed consent in medical procedures, protection against unnecessary interventions, and flexibility in civil status registration.

## Civil Status Law

Kosovo's Civil Status Law regulates the registration of births, marriages, and deaths, as well as the recording of personal details such as name and gender. However, this law does not contain any provisions that address the situation of intersex individuals, particularly in relation to gender markers. Under the current legal framework, gender markers must be registered as either male or female at birth, with no options for recognizing intersex variations or allowing for the deferral of gender assignment until the individual is capable of giving informed consent. The legislation on Civil Status stipulates that parents must register their newborn child's birth within 15 days of the baby's birth, or up to 30 days under "exceptional" circumstances.<sup>6</sup> Nevertheless, the legislation is ambiguous about what constitutes an unusual circumstance. The child's sex, which is defined by Kosovo law as either female or male, is then listed on the birth certificate. The law grants doctors the authority to determine the sex of intersex newborns.

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<sup>6</sup> Republic of Kosovo (2011) Law on Civil Status No. 04/L-003, Articles 34-36. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2380>.

Even in the new draft Civil Status Law, which has made significant progress in regulating procedures for transgender individuals—particularly with regard to the process of changing the gender marker<sup>7</sup>—it still fails to address the specific needs of intersex individuals. The draft law does not include any provisions that would regulate intersex persons' rights or permit the deferral of gender assignment at birth. As a result, intersex children are still assigned a binary gender at birth without the option for a flexible approach that would allow the individual, once they are capable, to make informed decisions about their gender identity. This lack of foresight highlights the need for further amendments to accommodate the unique needs of intersex individuals.

Recent discussions within legal and policy circles in Kosovo have indicated potential amendments to the Civil Status Law that may address gender identity issues more comprehensively. However, no formal steps have been taken to include specific provisions for intersex individuals in these discussions. Without explicit recognition of intersex people in civil status legislation, intersex individuals continue to face significant legal barriers in exercising their rights to self-identification and bodily autonomy.

Furthermore, the absence of clear guidelines for gender marker changes on identity documents places intersex individuals in precarious positions when it comes to legal recognition. Current procedures require a lengthy and invasive court process for amending gender markers, which disproportionately affects intersex individuals who may not identify with the gender assigned to them at birth. This

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<sup>7</sup> Republic of Kosovo (2023) Draft Law on Civil Status. Available at: <https://kryeminstri.rks-gov.net/wp-content/uploads/2023/11/-Projektligji-per-Gjendjen-Civile.pdf>.

procedural complexity further illustrates the inadequacies of Kosovo’s legal framework in accommodating the needs of intersex individuals.

While Kosovo has made strides in combating discrimination and providing general healthcare rights, the lack of intersex-specific legislation remains a critical gap in the protection of intersex individuals' rights. Reforming the Civil Status Law and enacting specific healthcare regulations will be essential steps towards ensuring that intersex persons in Kosovo can exercise their rights to informed consent, personal autonomy, and legal recognition in a manner consistent with international human rights standards.

## A Comparative Overview

Kosovo's current civil status laws do not adequately address the needs of intersex individuals, particularly concerning birth registration, name changes, and gender markers. The rigid binary classification of gender in official documents reinforces the medical practice of assigning a gender at birth, often without the consent or involvement of the intersex individual. This lack of regulatory guidance can lead to decisions made on behalf of intersex children at birth that do not reflect their future identity.

In Germany, the introduction of a “diverse” option for gender markers has provided intersex individuals with greater autonomy over their legal identity. This progressive approach allows for more nuanced recognition of gender identity beyond the traditional binary framework, thereby affirming the rights of intersex individuals to self-identify.<sup>8</sup>

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<sup>8</sup> OECD (2023) The Road to LGBTI+ Inclusion in Germany: Progress at the Federal and Länder Levels. Available at: [https://www.oecd.org/en/publications/the-road-to-lgbti-inclusion-in-germany\\_977b463a-en.html](https://www.oecd.org/en/publications/the-road-to-lgbti-inclusion-in-germany_977b463a-en.html).

Germany's experience illustrates how legal frameworks can evolve to accommodate the complexities of intersex identities, offering valuable lessons for Kosovo.

## **Healthcare and Legal Approaches: Kosovo and International Comparisons**

### **Medical Procedures and Lack of Regulation in Kosovo**

In Kosovo, medical interventions on intersex individuals, particularly infants, are largely unregulated, creating significant ethical and human rights concerns. The absence of specific legal frameworks governing medical practices related to intersex variations results in a landscape where non-consensual surgeries and invasive procedures are commonly performed without the informed consent of the affected individuals or their guardians. These procedures are often based on outdated medical beliefs that prioritize binary gender assignment over the rights and well-being of intersex individuals.

According to a Council of Europe report, it is estimated that in the previous years anywhere between 8.5% and 40% of intersex people “end up rejecting the sex they were assigned at birth demonstrating the major infringements of their psychological integrity.”<sup>9</sup>

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<sup>9</sup> Council of Europe (2015) Human Rights and Intersex People. Available at: <https://rm.coe.int/16806da5d4>.

In cases of intersex newborns, neonatologists typically inform parents about the general health condition of the infant without disclosing specific details regarding the baby's sex, as this requires further confirmation. Physicians communicate the presence of anatomical variations in the baby's genitalia and outline the subsequent steps, including referrals to relevant specialists for diagnostic verification. However, there is no standardized protocol in place to explicitly inform parents that their child is intersex, nor to explain the implications of this condition. Instead, information is delivered in a fragmented manner, with specialists such as endocrinologists, geneticists, radiologists, and pediatric surgeons each providing details pertinent to their respective fields. As a result, parents receive incomplete information, with the expectation that it will be clarified and expanded upon during future consultations.<sup>10</sup>

Moreover, the healthcare services provided to intersex individuals in Kosovo often lack a comprehensive understanding of intersex conditions and the specific needs of this population. Medical professionals may not receive adequate training regarding the rights of intersex individuals, further perpetuating a cycle of misunderstanding and mistreatment. This absence of supportive legal and medical frameworks directly impacts the quality of healthcare services available to intersex people, who may face discrimination or inadequate care when seeking medical assistance.

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<sup>10</sup> Kosovo 2.0. Intersex is not exactly 'breaking news'. Kosovo 2.0, 2019. Available at: <https://kosovotwopointzero.com/en/intersex-is-not-exactly-breaking-news/>.

## The Yogyakarta Principles and International Conventions on Intersex Rights

The Yogyakarta Principles represent a significant milestone in the advancement of human rights for individuals with diverse sexual orientations and gender identities, including intersex individuals. Developed by a group of human rights experts in 2006, these principles provide a comprehensive framework for the protection and promotion of the rights of sexual and gender minorities. Particularly relevant to intersex individuals, the Yogyakarta Principles emphasize the right to bodily autonomy, informed consent, and the prohibition of non-consensual medical interventions. Principle 18 specifically calls for the prohibition of unnecessary medical or surgical procedures on intersex children and emphasizes the importance of deferring such interventions until individuals can provide informed consent.<sup>11</sup>

In the context of Kosovo, the principles serve as a guiding reference for legal reforms aimed at improving the rights of intersex individuals. The lack of specific legislation addressing the needs of intersex people, combined with the absence of protections against non-consensual surgeries, underscores the urgency of aligning Kosovo's legal framework with these international standards. By adopting the Yogyakarta Principles, Kosovo could enhance its commitment to protecting intersex individuals from discrimination and violence, while also promoting their rights to health and bodily integrity.

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<sup>11</sup> United Nations Human Rights Office of the High Commissioner (2016) The Yogyakarta Principles plus 10: Additional Principles and Recommendations on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. Available at: [https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf).

In addition to the Yogyakarta Principles, various international conventions underscore the rights of intersex individuals. The Convention on the Rights of the Child (CRC),<sup>12</sup> ratified by Kosovo, mandates that all actions concerning children must prioritize their best interests (Article 3). This includes ensuring that medical decisions regarding intersex children are made with their consent and consideration of their rights. Similarly, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) recognizes the importance of addressing discrimination based on gender and sexuality,<sup>13</sup> indirectly supporting the rights of intersex individuals through its broader framework of gender equality.

Moreover, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>14</sup> reinforce the principles of non-discrimination, the right to privacy, and the right to health,<sup>15</sup> all of which are pertinent to the lives of intersex individuals. Kosovo's commitment to these international conventions creates a foundational obligation to enact legislation that addresses the specific needs and rights of intersex individuals.

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<sup>12</sup> UN General Assembly (1989) Convention on the Rights of the Child. Available at: <https://www.ohchr.org/sites/default/files/crc.pdf>.

<sup>13</sup> UN General Assembly (1979) Convention on the Elimination of All Forms of Discrimination against Women. Available at: <https://www.ohchr.org/sites/default/files/cedaw.pdf>.

<sup>14</sup> UN General Assembly (1966) International Covenant on Economic, Social and Cultural Rights. Available at: <https://www.ohchr.org/sites/default/files/cescr.pdf>.

<sup>15</sup> UN General Assembly (1966) International Covenant on Civil and Political Rights. Available at: <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>.

By interpreting and integrating the Yogyakarta Principles alongside these international conventions, Kosovo has the opportunity to forge a path toward comprehensive legal reform. Such reforms would not only protect the rights of intersex individuals but also ensure their dignity, health, and well-being in alignment with global human rights standards. Through the lens of these international frameworks, Kosovo can cultivate an inclusive society that recognizes and respects the diversity of human experience, ultimately leading to better outcomes for intersex individuals and the broader community.

The Yogyakarta Principles, along with international conventions like the CRC, CEDAW, ICCPR, and ICESCR, provide a robust framework for advocating for the rights of intersex individuals in Kosovo. By addressing the legal gaps in the current system and drawing from these international standards, Kosovo can create a more equitable and just society for all its citizens, particularly those who are intersex. The implementation of these principles and conventions is not merely a legal obligation but a moral imperative that reflects the values of dignity, respect, and equality for all individuals, regardless of their gender identity or biological characteristics.



## The Right to Informed Consent and International Best Practices

In the context of healthcare, the right to informed consent is fundamental to the dignity and autonomy of all patients, including intersex individuals. In Kosovo, however, intersex individuals face significant challenges in asserting this right within medical settings. The lack of legal recognition of intersex identities, coupled with the absence of protective legislation, leaves individuals vulnerable to medical decisions made without their informed consent. Many intersex persons may not have the opportunity to understand the implications of medical interventions, particularly if they are infants or minors.

The EU Charter of Fundamental Rights enshrines the right to integrity, and stresses that the free and informed consent of the person must be respected.<sup>16</sup> The right to make informed decisions about care and treatment options, and the right to refuse treatment, are basic patient rights. They ensure the ethical treatment of persons receiving medical or other professional health care services and the respect of their dignity and bodily autonomy.

The absence of informed consent about any medical intervention, let alone important interventions that modify the sex characteristics of a person can violate patients' rights, as well as the right to human dignity and the integrity of the person.

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<sup>16</sup> Charter of Fundamental Rights of the European Union. Article 3. Available at: [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf).

Internationally, several countries have established best practices that can serve as models for Kosovo. For instance, Malta has enacted legal prohibitions against non-consensual surgeries on intersex infants, recognizing the rights of individuals to make informed decisions about their bodies. The Maltese legal framework emphasizes the importance of informed consent and bodily autonomy, providing a template for Kosovo to develop similar protections.<sup>17</sup>

In Germany, the introduction of a third gender marker on official documents represents a significant advancement in the legal recognition of intersex individuals.<sup>18</sup> This change has facilitated improved access to healthcare and social services for intersex people, as it acknowledges and validates their identities. The potential roadmap for Kosovo lies in adopting similar measures that prioritize the rights of intersex individuals and ensure that medical interventions align with their autonomy and informed consent.

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<sup>17</sup> Parliament of Malta (2015) Gender Identity, Gender Expression and Sex Characteristics Act. Available at: <https://rm.coe.int/168045b1e6#:~:text=The%20ob-jects%20of%20this%20Bill,sex%20characteristics%20of%20a%20person.>

<sup>18</sup> Federal Anti-Discrimination Agency (2018) Male – Female – Diverse: The "Third Option". Available at: <https://www.antidiskriminierungsstelle.de/EN/about-discrimination/grounds-for-discrimination/gender-and-gender-identity/third-option/third-option-node.html>.

Additional EU countries, such as Portugal and the Netherlands, have developed comprehensive guidelines for intersex healthcare that emphasize informed consent and respect for bodily autonomy. These nations have created frameworks that support intersex individuals in making informed choices about their medical care, thereby reducing the prevalence of non-consensual interventions.

## Recommendations for Kosovo's Healthcare and Legal Reform

To align with international best practices and protect the rights of intersex individuals, Kosovo must undertake significant reforms in its legal and healthcare systems. Key recommendations include:

### 1. **Legislation on Informed Consent:**

Develop comprehensive laws that explicitly protect the rights of intersex individuals to bodily autonomy. Such legislation should prohibit non-essential surgeries on intersex infants and minors until they are capable of providing informed consent. Establishing clear guidelines for informed consent in medical settings will empower intersex individuals and safeguard their rights.

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<sup>19</sup> European Union Agency for Fundamental Rights (2020) A Long Way to Go for LGBTI Equality: Homophobia, Transphobia, and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU. Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-lgbti-equality-1\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf).

## **2. Birth Registration and Identity Documents:**

Reform civil status laws to allow for flexible gender markers that acknowledge intersex variations. This includes the introduction of a third gender option on birth certificates and legal documents, as well as streamlined procedures for changing legal gender markers. Aligning Kosovo's legal framework with EU practices will enhance the recognition and rights of intersex individuals, ensuring they can live authentically in their identities.

## **3. Training and Education for Healthcare Providers:**

Implement training programs for healthcare professionals on intersex issues, focusing on informed consent and the specific medical needs of intersex individuals. By fostering a better understanding of intersex conditions among medical staff, Kosovo can improve the quality of care provided to intersex patients and reduce instances of discrimination or inadequate treatment.

## **4. Awareness Campaigns:**

Launch public awareness campaigns to educate the broader community about intersex issues, rights, and the importance of informed consent. Increasing societal understanding of intersex identities will contribute to reducing stigma and promoting acceptance.

Comprehensive healthcare and legal reforms are essential to protect the rights of intersex individuals in Kosovo. By adopting best practices from international examples and prioritizing informed consent and legal recognition, Kosovo can create a more equitable and inclusive society for all its citizens, regardless of their gender identity.

# Conclusions and suggested priorities

The lack of specific protections and inadequate healthcare protocols contribute to the marginalization of intersex people, undermining their rights and well-being. The comparative analysis with other EU countries has demonstrated the potential for meaningful reforms that can enhance the lives of intersex individuals in Kosovo.

There is an urgent need for both legislative and healthcare reforms to align Kosovo's practices with international human rights standards. By enacting comprehensive laws that protect the rights of intersex individuals and by improving healthcare practices, Kosovo can ensure that intersex people are afforded the dignity, respect, and rights they deserve. It is imperative that stakeholders at all levels, including government authorities, healthcare providers, and civil society, collaborate to create a more inclusive and equitable society for intersex individuals.

## **Establish Multidisciplinary Medical Teams:**

Formulate comprehensive medical teams that include various specialists to accurately diagnose intersex conditions, monitor the health of intersex infants and children, and assist parents throughout the process. This multidisciplinary approach is crucial for delivering holistic and informed care.

## **Develop Written Protocols:**

Create and implement standardized written protocols that guide the treatment, follow-up care, and overall management of intersex individuals. These protocols should be evidence-based and regularly updated to reflect the latest medical and ethical standards.

## **Educate Healthcare Professionals:**

Provide targeted training programs for healthcare staff, including doctors, nurses, and midwives, focusing on intersex issues. This education should encompass medical, psychological, and ethical dimensions to foster a more supportive environment for intersex patients and their families.

## **Data Collection and Reporting:**

Initiate systematic data collection and analysis regarding intersex-related diagnoses and medical practices across all maternity and pediatric healthcare facilities. This information should be reported annually to track progress and identify areas needing improvement.

## **Psychological and Social Support Services:**

Develop comprehensive psychological and social counseling services tailored for intersex individuals and their families. This includes establishing sustainable therapy options that address the unique challenges faced by intersex people.

## **Integrate Intersex Education in Medical Curricula:**

Incorporate updated and relevant intersex content into the curricula of medical schools and universities. This should aim to enhance future healthcare professionals' understanding of intersex variations and the importance of informed consent and bodily autonomy.

## **Enhance Medical Education for Sensitivity:**

Revise ongoing medical education programs for nurses and midwives to include sensitive vocabulary and communication strategies that help parents understand their child's intersex condition, thereby promoting a supportive atmosphere.

## **Acknowledge Sex Characteristics in Anti-Discrimination Laws:**

Advocate for the inclusion of sex characteristics as a recognized ground for discrimination in anti-discrimination legislation. This legal recognition is essential for protecting the rights of intersex individuals within Kosovo's legal framework.

