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EDITORA

THE LEGAL, SOCIAL, AND BIOLOGICAL CONSTRUCTION OF INTERSEX RIGHTS AROUND THE WORLD

A CONSTRUÇÃO JURÍDICA, SOCIAL E BIOLÓGICA DOS DIREITOS INTERSEXO NO MUNDO

LA CONSTRUCCIÓN JURÍDICA, SOCIAL Y BIOLÓGICA DE LOS DERECHOS DE LAS PERSONAS INTERSEXUALES EN EL MUNDO

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ABSTRACT

Considering the historical marginalization of intersex people and the predominance of binary biomedical conceptions that, over time, pathologized their bodies and denied their self-determination, this article analyzes the legal construction of intersex rights in the international context and its repercussions on the Brazilian legal system. The aim is to examine the normative and jurisprudential evolution aimed at protecting the bodily integrity, civil recognition, and guaranteeing the autonomy of these people. To this end, documentary and chronological research is conducted, based on the analysis of legislation, treaties, and judicial decisions issued between 1996 and 2024, in light of theoretical frameworks from human rights and gender studies. Thus, it is observed that, in recent decades, several countries have

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moved from legal invisibility to the consolidation of legal frameworks that prohibit non-consensual medical interventions, recognize the "intersex" marker, and establish mechanisms for historical reparation. However, it appears that Brazil still lacks specific legislation, limiting itself to the generic application of constitutional principles. It follows, therefore, that the full realization of intersex rights requires not only legal norms but also a cultural and institutional transformation that ensures the right to bodily self-determination and dignified and inclusive citizenship.

Keywords: Self-determination. Intersex People. Gender Rights. Anti-discrimination Public Policies.

RESUMO

Considerando a histórica marginalização das pessoas intersexo e a predominância de concepções biomédicas binárias que, ao longo do tempo, patologizaram seus corpos e negaram sua autodeterminação, o presente artigo analisa o processo de construção jurídica dos direitos intersexo no contexto internacional e suas repercussões no ordenamento brasileiro. Objetiva-se examinar a evolução normativa e jurisprudencial voltada à proteção da integridade corporal, ao reconhecimento civil e à garantia da autonomia dessas pessoas. Para tanto, procede-se a uma pesquisa documental e cronológica, fundamentada na análise de legislações, tratados e decisões judiciais editados entre 1996 e 2024, à luz de referenciais teóricos dos direitos humanos e dos estudos de gênero. Desse modo, observa-se que, nas últimas décadas, diversos países avançaram da invisibilidade jurídica para a consolidação de marcos legais que proíbem intervenções médicas não consentidas, reconhecem o marcador “intersexo” e instituem mecanismos de reparação histórica. Contudo, verifica-se que o Brasil ainda carece de legislação específica, limitando-se à aplicação genérica de princípios constitucionais. Conclui-se, portanto, que a efetivação plena dos direitos intersexo requer não apenas normas jurídicas, mas uma transformação cultural e institucional que assegure o direito à autodeterminação corporal e à cidadania digna e inclusiva.

Palavras-chave: Autodeterminação. Pessoas Intersexo. Direitos de Gênero. Políticas Públicas Antidiscriminatórias.

RESUMEN

Considerando la marginación histórica de las personas intersexuales y el predominio de concepciones biomédicas binarias que, con el tiempo, patologizaron sus cuerpos y negaron su autodeterminación, este artículo analiza la construcción jurídica de los derechos intersexuales en el contexto internacional y sus repercusiones en el sistema jurídico brasileño. El objetivo es examinar la evolución normativa y jurisprudencial orientada a la protección de la integridad física, el reconocimiento civil y la garantía de la autonomía de estas personas. Para ello, se realiza una investigación documental y cronológica, basada en el análisis de legislación, tratados y decisiones judiciales emitidas entre 1996 y 2024, a la luz de los marcos teóricos de los estudios de derechos humanos y de género. Así, se observa que, en las últimas décadas, varios países han pasado de la invisibilidad jurídica a la consolidación de marcos legales que prohíben las intervenciones médicas no consensuadas, reconocen la condición de "intersexual" y establecen mecanismos de reparación histórica. Sin embargo, parece que Brasil aún carece de legislación específica, limitándose a la aplicación genérica de los principios constitucionales. De ello se desprende que la plena realización de los derechos intersexuales requiere no sólo normas jurídicas, sino también una transformación cultural e institucional que garantice el derecho a la autodeterminación corporal y a una ciudadanía digna e inclusiva.

Palabras clave: Autodeterminación. Personas Intersexuales. Derechos de Género. Políticas Públicas Antidiscriminación.

1 INTRODUCTION

The way society understands the human body and its variations is still marked by limited conceptions, which reduce the concept of sex only to the male and female categories. However, it is estimated that up to 1.7% of babies do not fit into this model, integrating the group of intersex people. These children differ from the rest because their chromosomes, gonads, or genitalia do not correspond to socially established standards. At the beginning of the twenty-first century, Blackless et al. (2000) analyzed publications between 1955 and 1998 and found that about one in 100 children born is intersex, and the rate of genital surgeries performed to "adjust" their appearance reaches two in every thousand live births (UNITED NATIONS, 2020).

In a more recent study, Santos, Albuquerque, and Freitas (2024) point out that about 9.75% of the world's population has some intersex variation, a number significantly higher than previous estimates. This expansion stems from the scientific recognition of a broader spectrum of variations in sexual development, previously disregarded by traditional biomedical models. The data reinforce the urgency of public policies and legislation that recognize human bodily diversity and ensure the fundamental rights of intersex people.

The record of intersex people is old. Since Ancient Greece, there were already documents that dealt with the subject, which demonstrates that the discussion extends to contemporaneity. The predominant view, however, was the Eurocentric one, which considers intersex as a problem to be solved by medicine, erasing or ignoring the perspectives of indigenous groups and African peoples, who saw this condition differently, and not as a pathology. Cardoso (2024) argues that intersex, as a social phenomenon, needs to be understood outside the colonial gender matrix.

Throughout much of the twentieth century, intersex people were subjected to numerous human rights violations, including surgeries and hormone treatments performed without consent, in addition to the denial of access to civil registration. This reality highlights the fragility of the legal protection intended for this group, due to the absence of specific rules.

In view of this, this article aims to present the legal construction of intersex rights, organizing in a chronological way the evolution of international legislation, in order to analyze its development and its impacts on Brazilian norms and policies (LEIVAS, 2023).

2 SILENCE AND MARGINALIZATION (UNTIL THE 1990S)

When the Eurocentric view came to dominate scientific and social dialogue in the nineteenth century, the narrative of "abnormality" about intersex bodies was consolidated, considered a deviation that could be corrected through medical procedures, often performed without the person's consent. This approach integrates the biopolitical logic of the organization of society, structured by the gender binarism, which seeks to maintain a supposed sexual and social hierarchy. Thus, the intersex category should not be analyzed only from a medical perspective, but also from the social, political, and historical dimensions (TILIO, 2021).

Until the early 2000s, practices such as early genital surgery and hormone replacement therapy (HRT) were often applied to children with atypical sex characteristics. These interventions were strongly influenced by the theories of John Money, a psychologist and sexologist at Johns Hopkins University, an advocate of the so-called "gender neutrality". According to this conception, gender identity could be shaped by the environment and upbringing, with surgeries performed in the first years of life being the most effective means of adapting to the assigned social role (KELLY, 2017).

The most emblematic case of these practices is that of David Reimer, a victim of genital mutilation resulting from an unsuccessful circumcision. Influenced by Money, his parents chose to raise him as a girl, subjecting him to genital surgery, administration of female hormones and education aimed at the female gender. In fact, his name was changed: from Bruce to Brenda (FERRARI, 2020).

Initially presented by Money as a "success story", the experiment turned out to be a tragedy. Reimer never identified herself as a girl, suffered school violence, developed dysphoria and, at the age of 13, even threatened suicide if he was forced to continue treatment. It was only at the age of 15 that she discovered the truth about her story, resumed the name David, and began masculinizing hormone treatments, genital reconstruction surgeries, and mastectomy to reverse previous procedures (UTTERLY INTERESTING, 2022).

In 1997, he decided to make his experience public, granting interviews and publishing the book *As Nature Made Him: The Boy Who Was Raised as a Girl*, becoming a symbol of resistance and criticism to early medical interventions in children, as well as to the theory of gender malleability defended by Money (ROSIN, 2008). Unfortunately, the outcome was tragic: in 2004, at the age of 38, David Reimer took his own life (LOS ANGELES TIMES, 2004). Her case remains, to this day, as a powerful wake-up call about the risks of early and non-consensual interventions in sex and gender issues.

This episode took place in the United States, the country where John Money developed and applied his theories. In the second half of the twentieth century, the North American context was marked by strong medical influence in the definition of gender norms and by a health system centered on the decisions of professionals, with little participation of families and almost no listening to the children themselves (KELLY, 2017). The belief in medicine's ability to "correct" bodily variations was added to a rigidly binary social environment, which favored early interventions carried out, many times, without consent, or with consent obtained in circumstances of pressure and misinformation.

These practices sought to fit bodies within the male or female binary model, usually without legal authorization from those responsible. When authorization existed, it was often obtained under strong medical influence, constituting a manipulated consent. During this period, there was no legislation that protected the rights of intersex people or guaranteed their civil recognition, leaving them vulnerable to irreversible and, in many cases, traumatic medical decisions (UTTERLY INTERESTING, 2022).

2.1 INITIAL LEGAL RECOGNITION (1996 -2009)

The legal recognition of intersex people began in 1996, with the case of *P. v. S. Cornwall County Council* (CJEU, C-13/94), in which a trans woman was dismissed for gender discrimination and appealed to the Court of Justice of the European Union. The decision expanded the legal understanding of the concept of sex, influencing debates on body and gender diversity, including the recognition of intersex rights.

In 2002, Emi Koyama and Lisa Weasel made a fundamental contribution by denouncing the medicalization of intersex bodies and the legislative omission that legitimized such practices, through the article *From Social Construction to Social Justice*. Although the text did not present specific legal proposals, it was decisive in highlighting the urgency of a legislative reform. The authors emphasized the need to articulate theory, activism, and legislation in favor of bodily autonomy, strengthening a discourse that would gain greater visibility in the following years.

The following year, in 2003, Australia became the first country to allow the registration of intersex people in passports. This advance paved the way for other initiatives, such as the approval of the *Sex Description Alteration Act* in South Africa, which made it possible to change documents without the imposition of compulsory surgeries. In 2005, the *Law for the Promotion of Equality* further consolidated protection, including intersex people among groups protected against discrimination, making the country a world reference on the subject at the time.

In the United Kingdom, however, the *Gender Recognition Act* (2004) adopted restrictive criteria by requiring a medical diagnosis of gender dysphoria for legal gender reassignment. This requirement ended up excluding intersex people, even though some were indirectly contemplated. Although aimed at the trans population, this legislation has sparked relevant debates by exposing the limits of a legal model based exclusively on medical diagnosis.

In 2006, the European Union adopted Directive 2006/54/EC (Recast Directive), aimed at promoting equality between men and women at work. Although based on binarism, the rule can be interpreted in an inclusive way in light of the precedent of the *P. v. S. case*, expanding protection against discrimination by sex. That same year, however, criticism arose of the *Consensus Declaration on DSD*, prepared by international medical societies. The document established clinical guidelines for the "treatment" of intersex variations, reinforcing the idea of pathologization and reiterating practices that reduced body diversity to a medical problem.

The course between 1996 and 2006 demonstrates that legal frameworks, academic productions and legislative initiatives shaped, albeit unevenly, the foundations of the recognition of intersex rights. If, on the one hand, cases such as *P. V. S.* and the legislation of Australia and South Africa represented advances in protection against discrimination and the right to identity, on the other hand, documents such as the *Consensus Declaration on DSD* evidenced the persistence of a medicalizing approach, which reduces intersex bodies to conditions to be corrected. Still, this set of measures laid the groundwork for a more comprehensive legal debate on the rights of intersex people in the years to come.

2.2 ANTI-DISCRIMINATION PROTECTIONS AND CIVIL REGISTRATION (2010-2015)

From 2010 onwards, the recognition of intersex people in anti-discrimination legislation in different countries began to gain strength, marking significant advances in both the protection of rights and the visibility of this population. In Australia, the *Sex Discrimination Act* was amended to include "intersex status" as a protected category, consolidating it as a specific legal criterion for defending against discriminatory practices (INTERSEX HUMAN RIGHTS AUSTRALIA, 2020).

In this process, the Brazilian Association of Intersexes (ABRAI) has taken on a fundamental role: by bringing together intersex people and family members, it has created spaces for listening, transformed experiences into knowledge production, and denounced historically silenced violations (SANTOS, MARTINS, 2023). More than broadening the public debate, ABRAI began to have a direct impact on the political field, pressuring the State for measures that recognized the dignity and autonomy of this population.

In Latin America, Argentina stood out in 2012 with the approval of the *Gender Identity Law*, initially aimed at the trans population, but which also opened the door to applications in the intersex context (ARCHIVO PRENSA INADI, 2015). The legislation allowed the legal change of sex without the obligation of surgeries, affirming gender self-determination as a principle.

Also in 2012, in Brazil, Law No. 12,662/2012, which regulates the Declaration of Live Births (DNV), brought the possibility of registering newborns with the marking "unknown sex".

The 2012 provision, although it represented an initial advance, was highly bureaucratic, requiring complex and time-consuming medical examinations to be carried out for the issuance of the Declaration of Live Birth (DNV) of intersex babies. This procedure, which could last for months, resulted in the deprivation of fundamental rights, such as access to civil registration, the Unified Health System (SUS) card, and maternity assistance. The case of Jacob Cristopher, widely reported by Santos (2025) in his work *Jacob* and deepened in his doctoral thesis (SANTOS, 2020), illustrates this reality.

In 2016, Jacob remained months without a birth certificate and without access to public policies, while his mother was denied the benefit of maternity aid by the INSS, under the justification that the baby did not have a defined sex. The complaints arising from this case motivated the National Council of Justice (CNJ) to review the rules, culminating in the issuance of Provision No. 122/2021, which reduces bureaucracy in the issuance of the DNV, allowing registration with the marking "unknown sex" without the need for prior examinations or judicial authorization. This new normative framework ensures the right to immediate civil registration and dignity of intersex people and their families, in line with the principles of the Declaration of San José de Costa Rica and the Chicago Consensus, which defend respect for bodily autonomy and gender self-determination.

The measure sought to ensure the issuance of the birth certificate even in situations of sexual uncertainty, in order to guarantee fundamental rights from the first days of life:

The 'ignored sex' is for babies who are born in a state of intersex, which doctors cannot define as male or female. With this, the certificate is issued so that the rights of that baby are guaranteed, not violated (BRASIL, 2012; NATIONAL COUNCIL OF JUSTICE, 2025).

In Europe, Germany moved forward in 2013 with *the Gesetz zur Änderung personenstandsrechtlicher Vorschriften* (PStRÄndG), which determined the issuance of civil registration without gender specification when the child could not be designated as male or female (PIKRAMENOU, 2019). Unlike the Australian approach, however, this classification was mandatory and conducted exclusively by doctors, without the participation of the family or the child himself. Despite its limitations, the law represented a milestone in the legal visibility of intersexuality, although it was criticized precisely for not dialoguing with the intersex community (TRAVIS, 2015).

In the same period, Australia strengthened its legislation with the *Sex Discrimination Amendment* (2013), which explicitly included intersexuality as a legal basis against discrimination (AUSTRALIAN GOVERNMENT, 2013). In the United States, the revision of the *DSM-5* (2013) began to contemplate gender dysphoria in intersex people, influencing international legislation, such as that of the United Kingdom, to extend legal coverage to the intersex population (AMERICAN PSYCHIATRIC ASSOCIATION, 2013). Also in 2013, *Resolution 1952* of the Parliamentary Assembly of the Council of Europe highlighted the right to physical integrity of intersex children and condemned the performance of surgeries without consent (COUNCIL OF EUROPE, 2015).

Legal recognition continued to expand, with Malta making a name for itself in 2015 by passing the world's first law banning surgeries and hormone treatments on intersex children without consent (GHATTAS, 2019). That same year, other countries advanced in legal protection, such as Chile, through jurisprudence *P-598-2015*, which judicially recognized rights violations in unauthorized intersex surgeries (CARPENTER, 2016), and Greece, which included "sex characteristics" as a criterion for anti-discrimination protection in *Law No. 4356/2015*. These advances, added to other legal reforms in different countries, consolidated a global trend of strengthening the rights, autonomy and legal protection of the intersex population, creating more solid foundations for future transformations (GARLAND; TRAVIS, 2018).

This period shows that, in addition to civil registration, anti-discrimination protection has become a central axis in guaranteeing intersex rights, paving the way for broader debates on bodily autonomy and legal inclusion (CARPENTER, 2016). The measures adopted between 2010 and 2015 created an initial panorama that will be deepened in the next phase, dedicated to "Surgical Prohibitions and Judicial Repair (2016-2021)", highlighting new legislation, practices and jurisprudence that consolidate fundamental rights and guarantees for intersex people.

2.3 SURGICAL PROHIBITIONS AND JUDICIAL REDRESS (2016-2021)

From the mid-2010s, several nations began to adopt a more assertive stance regarding the legal protection of intersex people, especially with regard to the prohibition of "normalization" surgeries performed in childhood. These practices, historically legitimized by medical and aesthetic discourses, have come to be widely denounced by international human rights bodies, such as the UN Committee against Torture (CAT), the UN Committee on the Rights of the Child (CRC), the United Nations High Commissioner for Human Rights (OHCHR), as well as regional entities such as the Council of Europe (COUNCIL OF EUROPE, 2017), and civil society organizations, such as Amnesty International (AMNESTY INTERNATIONAL, 2017).

Such institutions have reiterated that these interventions constitute forms of mutilation, violation of bodily integrity and degrading treatment. This new moment differs from previous phases not only because it recognizes the existence of bodies that do not fit into the binary logic, but also because it translates this recognition into legal mechanisms of protection and, albeit timidly, of state accountability and judicial reparation.

Portugal was one of the first countries to adopt national legislation that explicitly recognized the rights of intersex people and that tried to prevent non-consensual bodily interventions. *Law No. 38/2018* (PORTUGAL, 2018), sanctioned in August of that year, established the right to self-determination of gender identity and the protection of sexual characteristics. In an innovative way for the Iberian context, article 5 of the norm determines that, except in cases of proven risk to health, medical interventions that alter the sexual characteristics of intersex children must be postponed until they themselves are able to manifest their identity and consent in a free and informed manner.

The measure represents an inversion of logic: what was previously decided unilaterally by doctors and family members now depends on the maturity and consent of the subject in question. Although important, the Portuguese law has practical gaps, as it does not define specific sanctions in case of non-compliance and leaves ample interpretative space when considering what is configured as "risk to health", which can perpetuate decisions based more on social pressures than on strictly clinical criteria.

Inspired by international advances and human rights standards, Iceland passed, in 2019, the *Act on Gender Autonomy* No. 80/2019 (ICELAND, 2019), which consolidates the right to gender self-determination and the protection of bodily integrity. This law establishes that all forms of discrimination based on "gender", understood as a concept that includes sex characteristics, are prohibited.

With regard to intersex children, the legal text details that "permanent changes in the sexual characteristics of a child born with atypical sex characteristics can only be carried out with the consent of the person himself", reinforcing that motivations such as social or aesthetic factors are not acceptable. Exceptions are allowed only in cases of imminent risk to life or physical health, and even then, they must be submitted to the analysis of a Medical-Social Oversight Committee, created specifically to evaluate these situations.

This committee is made up of experts from different areas, representatives of civil society and defenders of children's rights, which ensures a participatory and multidisciplinary dimension to decisions. Icelandic legislation has also innovated by allowing the child's civil registry to contain no fixed sex marker until the child herself manifests her gender identity. This approach reinforces the principle of the best interest of the child, provided for in *the UN Convention on the Rights of the Child* (CRC, 1989), and constitutes a model of legal governance sensitive to the plurality of bodies and subjectivities.

In the same period, Germany, after a history of timid and symbolically ambiguous measures, took a more decisive step with the approval, in 2021, of the Law on the Protection of the Body Integrity of Children with Variations in Sexual Development (GERMANY, 2021). Until then, the country had limited itself to allowing, since 2013, civil registration without mention of sex for intersex newborns, a measure that, despite being pioneering, was criticized for being compulsory, without consulting the affected community, and for not being articulated with legal guarantees of protection (HUMAN RIGHTS WATCH, 2017).

With the new legislation, Germany now prohibits medical interventions in children with sexual variations without urgent clinical justification, transferring to the Judiciary the competence to authorize, on a case-by-case basis, any procedure with the purpose of defining sex. The medical decision now depends on the analysis of an interdisciplinary commission and the proof that the intervention is, in fact, indispensable to the child's health. Still, activists and jurists point out that German law remains vulnerable to elastic interpretations of the concept of "medical urgency", which may allow the maintenance of adequacy practices based on subjective criteria of functionality or appearance (INTERACT, 2020).

In addition to preventive legislation, an international agenda aimed at judicial reparation for damages caused to intersex people began to emerge during this period. Countries such as Chile, the United States, and Germany registered the first lawsuits filed by individuals who, after having undergone non-consensual surgical interventions in childhood, sought recognition and compensation for physical, emotional, and moral damages (HUMAN RIGHTS WATCH, 2017; INTERACT, 2020). These cases, still scarce, show a shift in the intersex struggle: from the prohibition of mutilation to the historical accountability of States and medical institutions. This is a fundamental step to break the cycle of impunity that, for decades, has treated intersex bodies as objects of medical guardianship and erased their voices from the public sphere.

This new cycle, which began between 2016 and 2021, marks a turning point in the legal treatment of intersexuality. It is no longer just a matter of guaranteeing freedom of identity or symbolic recognition, but of directly confronting the clinical model that, for decades, operated under the logic of institutionalized mutilation. By establishing legal restrictions on non-urgent surgical interventions, creating supervisory bodies, and opening paths for judicial redress, these legislations reveal that the rights of intersex people are gradually going beyond the exclusive domain of medicine and are being incorporated, albeit slowly, into the normative systems that govern full citizenship, human dignity, and bodily diversity (COUNCIL OF EUROPE, 2017; OHCHR, 2019).

2.4 LEGAL CONSOLIDATION AND JUDICIAL DECISIONS (2022-2024)

In recent years, between 2022 and 2024, what can be called a phase of legal consolidation and jurisprudential advancement in the recognition of the rights of intersex people has been observed. Unlike previous cycles, this period is marked by the enactment of stricter laws, with clear penal and administrative provisions, as well as judicial decisions that finally recognize, condemn, and repair damages caused by non-consensual surgeries (HUMAN RIGHTS WATCH 2017; INTERACT, 2020). It is, therefore, a moment in which the justice system begins to act not only in a normative and preventive way, but also in a punitive and restorative way, signaling the institutional maturation of the debate.

Greece was the country that took the most forceful step in this direction when it approved, in July 2022, Law *No. 4958/2022* (GREECE, 2022), establishing a series of unprecedented provisions in the European context. The new rule expressly prohibits any surgical intervention on intersex people under 15 years of age, except in situations of concrete risk to life or health. The innovative element of this legislation is the introduction of criminal sanctions for doctors, hospitals or legal guardians who authorize or carry out such procedures without the free, informed and repeated consent of the person involved.

Greek law also establishes protocols for the care of intersex children by the public health system, with psychological support, legal guidance, and the guarantee of the right to silence about their condition, thus breaking with compulsory exposure practices so common in medical institutions (ILGA-EUROPE, 2022). It is a legislative framework that signals not only the recognition of the rights of intersex people, but the willingness of the State to act actively to protect them through the use of its coercive power.

At the same time, the field of jurisprudence also began to move more clearly. In 2023, Belgium led to a historic court decision when it condemned a university hospital for having performed surgery on an intersex adolescent without her explicit consent (EUROPEAN UNION, 2025). The case, widely reported by human rights organizations, involved a patient who, during childhood, had undergone "genital normalization" procedures with the argument of reducing future suffering, a common justification in traditional medical discourse (AMNESTY INTERNATIONAL, 2017).

The Belgian court found that such practices violated the fundamental right to bodily integrity, dignity and autonomy, even with parental consent. By recognizing that the consent of legal guardians does not replace that of the affected person, especially when it comes to irreversible interventions, the court set an unprecedented precedent: civil liability for intersex mutilation in a European hospital environment. This decision indicates that the logic of medical guardianship is being replaced by a logic of legal accountability, in which individual consent, subjective maturity and respect for identity are priority criteria.

In the administrative field, Austria made symbolic progress by issuing a birth certificate with the marker "intersex" for the first time in its history in 2024 (AUSTRIA, 2024). Although Austrian legislation has not yet approved a national norm similar to that of Malta or Greece, the formal recognition of this marker represents an important step in legitimizing the legal status of intersex people, allowing their existence to be recognized not as a clinical exception, but as a legitimate category in the civil system. The measure stemmed from a lawsuit initiated years earlier, which invoked the principles of non-discrimination and free development of personality, present in the Austrian Constitution and the European Convention on Human Rights (COUNCIL OF EUROPE, 2017).

In the same year, the Netherlands passed a robust legislative proposal aimed at banning all surgeries on intersex minors that are not strictly necessary to preserve health (NETHERLANDS, 2024) The proposal is still in the process of full implementation, but it already determines that any intervention of this type will be considered illegal if there is no consent from the person himself or herself or risk of death. In addition, the bill provides for the creation of a national compensation and psychological rehabilitation fund for intersex people who have been subjected to such practices in the past. This is a step that goes beyond the future ban: it is a gesture of historical accountability, capable of restoring, at least partially, the dignity and recognition of so many childhoods violated under the pretext of normalization (ILGA-EUROPE, 2023).

This attitude is far from the reality observed in Brazil, where there is still no specific national legislation that regulates or prohibits "normalization" interventions in intersex bodies. Projects such as *PL No. 3,100/2024* (BRASIL, 2024), which seeks to consolidate rights to bodily integrity, self-determination, and identity protection, represent substantial advances, but remain, for now, only proposals in progress and face resistance both in the institutional and medical spheres.

The legal protection of intersex people in the country still depends on broader constitutional principles, such as the dignity of the human person, and on international human rights standards ratified by Brazil (BRASIL, 1988), without, unlike the Netherlands, any concrete provision for historical reparation, affirmative public policies or formal accountability mechanisms.

In this context, the understanding that non-consensual medical procedures should be understood not only as ethical failures, but as potential criminal violations, is gaining strength. The contemporary logic of medical and bioethical law points out that any intervention that alters the human body without the patient's consent can constitute bodily injury, even if performed under clinical or social justifications (MIGALHAS, 2022). This interpretation, applied to the experiences of intersex people, shows that the "normalization" surgeries historically practiced in Brazil can be read as typified aggressions, thus demanding legal accountability and not just ethical review.

This new moment is qualitatively different from the previous ones. It is no longer just a matter of legislating on what can or cannot be done, but of recognizing that what was done in the past was wrong, violent, and unjustifiable, and of taking legal action to redress and punish such practices (HUMAN RIGHTS WATCH, 2017; ILGA-EUROPE, 2023). The institutional maturation of this understanding has been built simultaneously by parliamentarians, magistrates, public defenders and, mainly, by the voices of the intersex community itself, who demand not only the right to exist, but the right to narrate their experiences, to denounce their pain and to reconstruct their trajectories with dignity (INTERACT, 2020).

The consolidation of this phase represents the articulation of three dimensions: legal prohibition, legal recognition and historical reparation (COUNCIL OF EUROPE, 2017). It is the moment when the intersex body is no longer seen only as medical territory and becomes, with full force, a subject of law, present in certificates, protected by courts and supported by public policies. And although the achievements are concentrated in a few countries, their symbolic reach reverberates globally, pressuring institutions, challenging omitted legislation, and strengthening the discourse that no corrective surgery can be more urgent than a person's right to be who they are (OHCHR, 2019).

3 THEORETICAL FRAMEWORK

The theoretical framework of this study is based on the interdisciplinary perspectives of Human Rights, Gender Studies and Anti-Discrimination Law, in order to understand the legal construction of intersex rights in different historical and normative contexts. The specialized literature shows that, historically, intersex bodies have been interpreted by medicine from a pathologizing and binary perspective, anchored in biomedical models that sought to "correct" body variations to adapt them to the male and female categories. Authors such as Butler (1990) and Fausto-Sterling (2000) problematize this logic, by demonstrating that sex is not a static biological category, but a social and political construction that serves to maintain gender and power norms.

In the legal field, the contributions of Corrêa (2019) and Bento (2022) reinforce that the absence of legal recognition of intersex people reflects the normative structure of modern law, which was organized under the binary gender paradigm. This limitation produces institutional invisibility and legitimizes violating practices, such as "adequacy" surgeries performed without consent. From the critical theory of human rights, especially in authors such as Santos (2020) and Martins (2023), the emergence of a new legal hermeneutic that recognizes the body as a subject of law and not as an object of intervention is observed.

Recent research by the UN (2021), the Inter-American Commission on Human Rights (2022), and international intersex organizations (such as OII and ILGA World) points to a global normative convergence around the right to bodily integrity, self-determination, and historical reparation. However, the literature also identifies gaps: there are still few studies that systematically analyze the transition between the medical-pathologizing model and the legal model of self-determination, especially in the Latin American context.

Thus, the theoretical framework that supports this research is articulated around three interdependent dimensions: the criticism of the biomedical construction of intersexuality, which has historically reduced body diversity to binary standards; the international legal recognition of intersex rights, which has been expanding the scope of protection of integrity and self-determination; and, finally, the consolidation of a legal paradigm based on the notion of bodily citizenship, capable of ensuring respect for the plurality and dignity of intersex people.

4 METHODOLOGY

The present study is characterized as a documentary and exploratory **research**, with a **qualitative** focus, having as its main source the national laws related to intersex people. The **analysis of legal norms, decrees and public guidelines** was considered, organized chronologically to allow the understanding of the historical evolution of legal guarantees. Initially, a **careful selection of current and previous laws was carried out,** identifying those that deal with the rights of intersex people, as well as health policies and civil recognition. Then, a **critical analysis of the legislative content was carried out,** comparing the advances and gaps that exist over time. The treatment of the data sought **to correlate the historical events with the current legislation**, enabling the construction of a timeline that shows significant changes, setbacks and progress in the legal and social recognition of intersex people.

5 RESULTS AND DISCUSSIONS

Despite the significant legislative advances observed in recent decades, the international scenario is still far from offering universal and equitable guarantees to intersex people. The surgical bans implemented in some countries, while important and symbolic, represent normative islands in an ocean of institutional omission (OHCHR, 2019). Most countries in the world still do not have specific legislation prohibiting unnecessary medical interventions performed on children with variations in sex characteristics (HUMAN RIGHTS WATCH, 2017).

In the absence of a protective legal framework, the decision about the body of an intersex child continues to be mostly determined by medical standards, expert opinion, and often social discomfort with genital ambiguity, and not by listening, consenting, or preserving the dignity of the subject (COUNCIL OF EUROPE, 2017).

Even in countries where progressive legislation has been passed, such as Malta, Portugal or Germany, the mechanisms for monitoring and accountability are still fragile, limiting the practical application of the guarantees provided. (ILGA-EUROPE, 2022). Laws prohibiting surgery without consent tend to be drafted with open-ended clauses – "health risk", "clinical emergency", "best interests of the child" – which, if not carefully interpreted, can reproduce exactly the practices they set out to abolish (AMNESTY INTERNATIONAL, 2017).

The persistence of this normative ambiguity is, in part, fueled by the scarcity of public and systematized data on intersex births, procedures performed, and long-term consequences (INTERACT, 2020). In many countries, it is not even possible to know how many intersex people live under the jurisdiction of the State, which prevents the planning of evidence-based public policies and reinforces statistical invisibility as a form of political erasure.

Another fundamental obstacle concerns historical reparation and access to justice. Cases in which victims of non-consensual medical interventions have been able to access judicial systems, be heard, and obtain compensation or formal apologies are still very rare (ILGA-EUROPE, 2023). This is not only due to a lack of clear legislation, but also because judicial, administrative, and health structures have not been trained to recognize intersexuality as a human rights issue (OHCHR, 2019).

Many legal professionals still treat these violations as private issues, restricted to the family or the intimate forum, without realizing that they are structural damage produced by institutional policies (MIGALHAS, 2022). Without courts, specialized prosecutors' offices and trained defenders, access to justice becomes an inaccessible labyrinth for people who have already faced, since childhood, the weight of silence and embarrassment.

The absence of official recognition of intersexuality in civil documents, population censuses, health systems, and school curricula deepens this cycle of exclusion (COUNCIL OF EUROPE, 2017). Intersexuality is still, in most educational systems, an absent theme, pathologized or treated as an exotic exception, which perpetuates misinformation among teachers, students, families and public agents.

Public policies aimed at the inclusion of the intersex population, such as access to affirmative health services, psychosocial support, legal guidance, and school support, are still scarce or non-existent (ILGA-EUROPE, 2022). Even where there are legal advances, there is a lack of government programs that articulate these norms with concrete actions for the protection, visibility, and guarantee of rights (OHCHR, 2019).

There is also a discussion about biopolitical identity, as explained in the article by Santos and Martins (2023). The authors carry out a historiographical survey of the term "intersex" and highlight that the inclusion of rights for intersex children occurred after the beginning of the discussions at the end of the twentieth century. The great issue brought up by this bibliography, in the context of health and the advancement of public policies, is that we should not - and cannot - ignore how people born under the diagnosis perceive themselves within a social sphere of gender.

Personal perception is also a factor to be considered, in addition to the biology of the body, as a political moment of the human being when declaring himself to the world. The authors also defend the increase, as of 2015, in the representation of intersex people in the spheres that formulate reception policies for this public, and the consequent strengthening of the agenda (SANTOS; MARTINS, 2023; CARDOSO; LOHANNA, 2024).

Given this scenario, the pending paths are urgent and cannot be postponed. States need to implement clear and binding legislation, with well-defined sanctions and effective control mechanisms (HUMAN RIGHTS WATCH, 2017). The permanent training of professionals in the legal, medical and educational areas must be guaranteed, so that they understand intersexuality not as a deviation to be corrected, but as a legitimate expression of human diversity. Data on intersex people need to be collected ethically, safely, and respectfully, as part of official statistics, in order to allow the design of specific and monitorable public policies (INTERACT, 2020).

In addition, it is necessary to consolidate channels for listening, reporting and reparation, with specific instances to welcome people who have suffered violations in the past. Historical reparation is not only a subjective right, but an ethical commitment of the democratic State to those who have been systematically marginalized in the name of a supposed bodily normality (COUNCIL OF EUROPE, 2017). This implies formally acknowledging that normalization surgeries performed without consent were state violence, even if practiced within hospitals or under apparent scientific support (MIGALHAS, 2022).

Finally, recent advances, although insufficient, show that it is possible to profoundly transform the way law relates to bodies (ILGA-EUROPE, 2022). Intersexuality, for a long time made invisible or captured by pathologizing discourses, emerges today as a field of legal and political dispute, where biology, subjectivity, citizenship, and resistance are articulated (INTERACT, 2020). The challenges are still numerous, but the paths are being charted, not only by laws and sentences, but mainly by the voices of intersex people who refuse to be silenced and who now rightly demand not only the right to exist, but the right to live with dignity, choice, and freedom (HUMAN RIGHTS WATCH, 2017).

6 CONCLUSION

When reading the first chapter of the book *Society, State and Right to Health*, by José Roberto Franco Reis, one observes the emphasis on a central issue for access to health in Brazil: its direct link with the idea of citizenship. Considering the violence already exposed in this article, the discussion about intersex people can extend to the temporal dimension. Analyzing how the absorption of these identities occurs in Brazilian society constitutes a guiding method for reflection, since, according to the author, "citizenship is a historical phenomenon, a product of the concrete struggles (social and political) of each society, beyond a normative model that represents it as a desirable ideal" (MOROSINI; REIS, 2007).

Consolidating the rights of intersex people is a task that goes beyond the scope of legislation. Although laws are fundamental tools to guarantee rights, punish abuses and guide institutional conduct, they do not have the power, alone, to transform deeply rooted cultural structures (OHCHR, 2019). What is at stake, when we talk about intersexuality, is not only the technical adjustment of norms, but the deconstruction of a binary and medicalizing logic that, for centuries, defined who could be recognized as a legitimate subject of rights (COUNCIL OF EUROPE, 2017) The challenge is, therefore, cultural, judicial, and medical at the same time, and requires a paradigmatic change that will only be possible through dialogue between all these spheres.

At the root of the oppression faced by intersex people is the denial of their bodily self-determination. The belief that bodies need to be corrected to fit a binary standard of masculinity or femininity sustains a chain of violence that begins in the cradle and extends throughout life (MIGALHAS, 2022). Breaking with this logic implies recognizing that each person has the inalienable right to decide about their own body, including the right not to be modified without their consent (ILGA-EUROPE, 2023). It is a radical change: to take away medicine's monopoly on bodies and to give back to intersex people the power over their own existences.

Likewise, the right to identity needs to be understood not only as the right to choose a legal gender marker, but as the right to constitute oneself subjectively, without pressure, impositions or mutilations (INTERACT, 2020). It is necessary to ensure that the State recognizes the plurality of bodily experiences as legitimate and protected in civil registries, schools, public campaigns, health services, and courts (OHCHR, 2019). Formal recognition is only the first step; What matters, ultimately, is the possibility of existing with freedom, without being forced to fit into a mold built by others.

Finally, effective access to justice represents one of the most urgent and neglected fronts. Without clear mechanisms for reporting, reparation, and accountability, violations committed against intersex people tend to remain unpunished and naturalized. The Judiciary needs to be educated, sensitized, and pressured to understand that these are not "medical", "private" or "intimate" issues, but rather structural violations of human rights that require an adequate institutional response (MIGALHAS, 2022).

In Brazil, it is already possible to observe advances in this regard: in a recent decision, the Federal Supreme Court recognized the legislative omission of the National Congress regarding the protection of intersex people, in Writ of Injunction No. 7452 (BRASIL, 2023), evidencing an openness of the Judiciary to treat the issue not only as a normative gap, but as an urgent agenda of fundamental rights.

The path, therefore, is neither short nor simple. The consolidation of intersex rights depends on laws, yes, but also on listening, training, empathy and restorative justice (COUNCIL OF EUROPE, 2017; ILGA-EUROPE, 2023). The current moment requires institutional courage to break with centuries of normalization of bodies and move towards a society that recognizes that there is no single legitimate way to be born, grow or exist (OHCHR, 2019). The future of intersex law is being written now – in court decisions, in bills, in schools, in public policy and, above all, in the voices of those who have never been invited to speak, but who today refuse to remain silent.

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