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THE HIGH COMMISSIONER
FOR HUMAN RIGHTS

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5 August 2026

Sir,

I wish to express my appreciation for the continued cooperation between Portugal and my Office on the promotion and protection of human rights.

On this occasion, I am writing with respect to draft laws 391/XVII/1, 479/XVII/1 and 486/XVII/1, currently under consideration before the Parliament of Portugal, and which seek to repeal law 38/2018 of 7 August 2018 on the right to self-determination of gender identity and gender expression and on the protection of the sex characteristics of all persons.

My Office has a number of observations on certain provisions of the draft laws, which I enclose in annex. In particular, my Office is concerned that, if adopted, the laws could negatively impact the enjoyment of a number of human rights enshrined in treaties ratified by Portugal, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

Given these concerns, I would urge that these draft laws be withdrawn or reviewed through transparent and inclusive consultations, to ensure their conformity with international human rights norms and standards. My Office remains at the disposal of relevant authorities and institutions, including Parliament, to provide technical advice on the draft laws in support of Portugal's efforts to uphold the human rights for all persons, without discrimination.

Please accept, Sir, the assurances of my highest consideration.

Volker Türk

Mr. José Pedro Aguiar-Branco
President of the Assembly of the Portuguese Republic

ANNEX

Comments by the Office of the United Nations High Commissioner for Human Rights on proposed legislative amendments in Portugal

OHCHR provides the following comments on draft legislative proposals 391/XVII/1, 479/XVII/1 and 486/XVII/1 that are currently under consideration in the Parliament of Portugal. These comments are based on international human rights norms and standards, including treaties ratified by Portugal, and made in line with Article 8 of the Constitution of Portugal.

Requirement of a medical report or diagnosis to obtain legal recognition of gender identity

Draft Law 486/XVII/1 proposes, in its Article 2, to repeal Law 38/2018 of 7 August 2018, in its Article 3 to reinstate Law 7/2011 of 15 March 2011, and in its Article 4 to amend the reinstated law by introducing a requirement for legal recognition of gender identity of "a report that proves gender incongruence or dysphoria, prepared by a specialized multidisciplinary clinical team in a public or private health establishment."

Draft Law 391/XVII/1 proposes in its Article 2 to repeal Law 38/2018 of 7 August 2018, in its Article 3 to reinstate Law 7/2011 of 15 March 2011, and in its Article 4 to amend the reinstated law by introducing a requirement for legal recognition of gender identity of "a report confirming the diagnosis of gender identity disorder in accordance with Article 79 of the Code of Ethics of the Order of Physicians."

Under international human rights law, everyone has a right to recognition as a person before the law, the right to privacy, the right to non-discrimination, the right to equal protection of the law, the right to bodily and mental integrity, and the right to freedom of expression.[1] OHCHR has previously urged that the process of legal recognition of gender identity be based on self-definition by the individual, involve a simple administrative process, and not require applicants to fulfil requirements such as presenting medical certifications.[2]

The UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has similarly stated that legal recognition of gender identity should, inter alia, be based on self-determination by the applicant; be a simple administrative process; and be based solely on the free and informed consent of the applicant without requirements such as medical and/or psychological or other certifications that could be

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1 International Covenant on Civil and Political Rights, Arts. 2, 9, 16, 17, 19, 26. See also International Covenant on Economic, Social and Cultural Rights, Art. 2, Convention on the Elimination of All Forms of Discrimination against Women, Arts. 2 and 15; Convention on the Rights of the Child, Arts. 2, 8 and 13. See also CEDAW/C/CRI/CO/8 para. 42, CEDAW/C/VEN/CO/9 para. 48, CCPR/C/UZB/CO/5 para. 11(d), CCPR/C/CZE/CO/4 para. 13, CCPR/C/GEO/CO/5 para. 18(c), CRC/C/GBR/CO/6-7 para. 25, 41(d), CRC/C/IRL/CO/5-6 para. 20(c), A/73/152, para 81(d), A/HRC/43/52, para 36(d).

2 OHCHR, written submission of 14 February 2017 to the Inter-American Court of Human Rights.

unreasonable or pathologizing.[3] The UN Special Rapporteur on the right to privacy has further stated that "States should ensure that [....] no eligibility criteria, such as [...] psycho-medical diagnosis [...] or any other third-party opinion, are prerequisites for or barriers to changing one's name, legal sex or gender."[4] The United Nations Human Rights Committee has called on States to provide and effectively implement a quick, transparent and accessible gender recognition procedure on the basis of self-identification by the applicant.,[5] and the Committee on the Elimination of Discrimination against Women has recommended States to respect the rights of transgender women to autonomy, self-determination and legal recognition of their gender identity through an expeditious, transparent and accessible process.[6] In 2019, the World Health Organization published the International Classification of Diseases 11th Revision (ICD-11), in which it updated its classifications in relation to gender identity-related health to reflect evidence that "trans-related and gender-diverse identities are not conditions of mental ill-health and that classifying them as such can cause enormous stigma."[7]

By imposing a requirement of a report or a diagnosis by a medical team as a condition for legal recognition of gender identity, the draft proposals risk (a) re-pathologizing gender identity by establishing its recognition as a medical issue to be certified or diagnosed by medical professionals (see also the next section), (b) negatively impacting the rights to privacy, autonomy and self-determination of transgender individuals by conditioning the recognition of their gender identity on third-party opinions by medical professionals, (c) running counter to recommendations United Nations human rights mechanisms.

Pathologization of transgender persons

Draft Law 391/XVII/1 includes multiple references to "gender identity disorder".

This diagnostic category was eliminated from the International Classification of Diseases 11th Revision (ICD-11) by the World Health Organization in 2019, including removing all references from the chapter on "Mental and behavioural disorders" to reflect evidence that "trans-related and gender-diverse identities are not conditions of mental ill-health and that classifying them as such can cause enormous stigma."[8]

By introducing language that treats transgender persons as ill, the draft proposals, if adopted, would contribute to further stigma. Multiple United Nations and regional human rights experts, including the Council of Europe's Commissioner for Human Rights, have emphasized that pathologizing transgender persons (i.e.: branding them as ill on the basis of

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3 A/73/152, para 81(d).
4 A/HRC/43/52, para 36(d).
5 CCPR/C/UZB/CO/5 para. 11(d).
6 See, e.g., CEDAW/C/CRI/CO/8 para. 42, CEDAW/C/VEN/CO/9 para. 48.
7 https://www.who.int/standards/classifications/frequently-asked-questions/gender-incongruence-and-transgender-health-in-the-icd.
8 https://www.who.int/standards/classifications/frequently-asked-questions/gender-incongruence-and-transgender-health-in-the-icd.

their gender identity and expression) has historically been, and continues to be, one of the root causes of the human rights violations they face, including discrimination and violence.[9]

Removal of ability for adolescents aged between 16 and 18 to obtain legal recognition of their gender identity

Draft Laws 486/XVII/1 and 391/XVII/1 both propose repealing Law 38/2018 of 7 August 2018, which, under Article 7 para 2, established the possibility for adolescents between the ages of 16 and 18 to request legal recognition of their gender identity through their legal representatives and through a procedure that ascertains their free and informed consent, and protects their rights as set out in the Convention on the Rights of the Child, ratified by Portugal in 1990, including the principles of progressive autonomy and protection of the best interests of the child. Neither draft law makes separate proposals for access to such legal recognition, and should either draft be adopted, such access would therefore be removed for persons between the ages of 16 and 18.

OHCHR has called on States to ensure that children have access to recognition of their gender identity — and stated that while safeguards in relation to the access of children to recognition of gender identity are appropriate, these should not be discriminatory or disproportionate and should respect the rights enshrined in the Convention on the Rights of the Child.

The United Nations Committee on the Rights of the Child has called on States to "recognize the right to identity of lesbian, gay, bisexual, transgender and intersex children, including the gender identity of transgender children."[10] The Committee has called on States "to allow children aged 16 and 17 to achieve legal recognition of their gender identity through a simplified procedure" and to "ensure that any decisions regarding systems of gender recognition for children are taken in close consultation with transgender children and in line with children's rights, including the right to be heard and the right to identity, in accordance with their evolving capacities, with free and informed consent and appropriate safeguards."[11] Absolute blanket prohibitions for adolescents aged 16 or 17 to obtain legal recognition of their gender identity run counter to the recommendations of the Committee on the Rights of the Child and do not appear to be consistent with the right of a child to be heard, for their views to be given due weight in accordance with their age and maturity, or for their best interests to be taken into account.[12]

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9 Joint statement of 16 May 2017 by the Committee on the Rights of the Child, Committee against Torture, Special Rapporteur on extreme poverty and human rights; Special Rapporteur on the right to education, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Special Rapporteur on the right to health, Special Rapporteur on violence against women, its causes and consequences, Working Group on the issue of discrimination against women in law and in practice, Inter-American Commission on Human Rights, African Commission on Human and Peoples' Rights Chairperson of the Committee for the Prevention of Torture in Africa, Council of Europe Commissioner for Human Rights.

10 CRC/C/CHL/CO/4-5 para. 35(b).

11 CRC/C/GBR/CO/6-7 para. 25, CRC/C/IRL/CO/5-6 para. 20(b)-(c).

12 CRC/C/IRL/CO/5-6 para. 20(b)-(c), CRC/C/GBR/CO/6-7 para. 25, CRC/C/CHL/CO/4-5 para. 35(b).

Law 38/2018 of 7 August 2018 already established a number of safeguards in relation to children obtaining legal recognition of their gender identity, including requiring that requests be made through the child's legal representative, that an in-person hearing be held by the registrar with the applicant to ascertain their express, free, and informed consent and that their capacity for decision-making and informed will be assessed through a report requested by the applicant from any doctor registered with the Order of Physicians or psychologist registered with the Order of Psychologists (without references to gender identity diagnoses), and always taking into account the principles of progressive autonomy and the best interests of the child as set out in the Convention on the Rights of the Child.[13]

While the explanatory memoranda for the draft laws make reference to recent concerns about access to medical procedures for children, they present no evidence relating to specific concerns about legal recognition of gender identity for children aged 16 and 17 that would have arisen since the adoption of the existing law in 2018. In all such discussions, it is critical to distinguish and separate the human rights considerations and safeguards in relation to legal recognition of gender identity from the human rights considerations and safeguards in relation to gender-affirming medical treatments and procedures for all persons, but particularly for children. Legal recognition processes entail different rights, considerations and safeguards from gender-affirming medical treatments and procedures, and these should not be amalgamated.

There is also no reference made to consultations with children aged 16 and 17, including transgender children, about their experiences in relation to legal recognition of gender identity and about the proposal to remove such a possibility. It is urged that any decision in this regard, especially one which diminishes existing protections, be the subject of consultations with the most affected population, specifically, transgender children aged 16 and 17.

In many cases, children will have started their social transition before considering applying for legal recognition of gender identity. It would be important that there be concrete evidence of additional risks a child might face through legal recognition in order to justify additional restrictions that would go beyond ensuring that a child is able to understand the implications and make an informed decision to request and consent to such recognition, giving due weight to the views of the child, in accordance with their age and maturity.

Removal of protections from non-discrimination

Draft Laws 486/XVII/1 and 391/XVII/1 both propose the repeal of Law 38/2018 of 7 August 2018, which, under Article 2, prohibited direct or indirect discrimination based on the exercise of the right to gender identity and gender expression and the right to protection of sex characteristics, and under Article 12, mandated measures to combat discrimination within the context of education on the basis of gender identity, gender expression and sex characteristics. The two draft laws propose to introduce new language on protection from discrimination as part of the reinstatement of Law 7/2011 of 15 March 2011. However, neither law reintroduces

[13] Portugal, Law 38/2018 of 7 August 2018, Article 7 para. 2.

protection from discrimination based on gender expression, nor mandates measures to combat discrimination within the context of education on the basis of gender identity, gender expression and sex characteristics, and draft Law 391/XVII/1 does not reintroduce protection from discrimination based on sex characteristics.

The Committee on the Elimination of Discrimination against Women has called on States to develop comprehensive anti-discrimination legislation that explicitly includes gender expression and sex characteristics as prohibited grounds of discrimination.[14] Multiple United Nations and regional human rights mechanisms have also called on States to protect intersex persons from discrimination based on sex characteristics.[15] The Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have raised serious concerns about harassment, bullying and discrimination of children in the context of education and called for States to take measures to combat these.[16]

Removing these protections from discrimination for transgender (and, in the case of draft Law 391/XVII/1, also intersex) persons in Portugal would be a significant step. However, the explanatory memoranda for both draft laws make no reference to the elimination of these protections from discrimination and do not provide a justification in this regard.

Restrictions on the right to non-discrimination

Draft Law 391/XVII/1 (Article 4-F Prohibition of discrimination para 2) stipulates that "the right to non-discrimination will be considered on a case-by-case basis when the safety, privacy, or physical integrity of persons of the opposite biological sex is at stake, in a prison context, in access to public sanitary facilities, and in public sporting competitions." The language of the draft provision risks having discriminatory effects with regard to persons who are not the "opposite biological sex".

Draft Law 486/XVII/1 (Article 5) stipulates the insertion of the following wording into Article 1A of Law 7/2011: "without prejudice to the provisions of the preceding paragraphs, sports federations or associations may adopt regulations establishing competitive categories based on biological sex when such distinction is intended to ensure the fairness and integrity of sports competitions."

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[14] CEDAW/C/BWA/CO/5 para. 13(b), CEDAW/C/NZL/CO/9 para. 9, CEDAW/C/CHN/CO/9 para. 64(c).

[15] Joint statement of 24 October 2016 by the Committee against Torture, Committee on the Rights of the Child, Committee on the Rights of People with Disabilities, Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on violence against women, its causes and consequences, Special Representative of the UN Secretary-General on Violence against Children, African Commission on Human and Peoples' Rights Chairperson of the Committee for the Prevention of Torture in Africa, Council of Europe Commissioner for Human Rights, Inter-American Commission on Human Rights.

[16] E/C.12/ISL/CO/5 paras. 52-53, E/C.12/GBR/CO/7 para. 56(e), E/C.12/LUX/CO/4 para. 38(d), CRC/C/NOR/CO/7 para. 34(e), CRC/C/DOM/CO/6 paras. 15-16, CRC/C/GBR/CO/6-7 paras. 20, 47, CRC/C/HUN/CO/6 paras. 35-36.

While it is important to ensure the fairness and integrity of sports competitions, including in women's sport, and this is a legitimate aim, the means of doing so must be compatible with international human rights norms and standards. A particular concern is that, even where such a policy is intended to ensure fairness and integrity, it may not, in fact, be based on robust evidence about performance or safety linked to a specific sport or discipline, and instead be based on stereotypes or generalised assumptions. OHCHR is of the view that mandatory genetic sex tests on all women and girls, and blanket prohibitions or exclusions on the participation of transgender women and/or women with diverse sex characteristics (also known as intersex women) in all of women's sport disciplines and events, at all levels, cannot be reconciled with international human rights norms and standards, including on non-discrimination, bodily integrity, informed consent, privacy, and proportionality.[17]

Restrictions on education and information relating to gender

Draft Law 391/XVII/1 (Art 4 H Education and Teaching para 1) stipulates that "the inclusion of gender ideology in the curriculum of educational establishments for minors under 18 years of age is prohibited, and education in this field is reserved exclusively for parents or legal guardians." The term "gender ideology" is not defined in the draft proposal.

The Committee on the Elimination of Discrimination against Women has repeatedly expressed concern about policies that are formulated as attempts to remove so-called "gender ideology" from school curricula, highlighting their negative impact on combating gender stereotypes, ensuring age-appropriate sexuality education and education on gender equality.[18]

The Human Rights Committee has found that discriminatory restrictions on freedom of expression, including restrictions on the provision of information to children relating to sexual orientation or gender identity, are not compatible with international human rights norms and standards.[19] It has found that such restrictions lack evidence, are not based on reasonable and objective criteria, constitute blanket restrictions on legitimate expression, and are not necessary in a democratic society in the interests of the protection of public health or morals or the protection of the rights and freedoms of others.[20] The Human Rights Committee has also found that "there is no basis on which to assume that the "mere mention of homosexuality", public expression of homosexual identity or a call for respect for the rights of homosexuals could have a negative effect on minors' rights and freedoms."[21] The Committee has also noted that such

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17 https://www.ohchr.org/en/statements-and-speeches/2026/06/upholding-girls-and-womens-rights-through-sport. See also statement of special procedures mandate holders: https://www.ohchr.org/sites/default/files/documents/issues/discrimination/260225-joint-statement-on-fairness-inclusion-and-non-discrimination-in-sport.pdf.

18 CEDAW/C/SLV/CO/10 paras. 21-22, 31-32, CEDAW/C/BRA/CO/8-9 paras. 30-31, CEDAW/C/PRY/CO/7 paras. 8-9.

19 CCPR/C/106/D/1932/2010, para. 10.8; CCPR/C/135/D/2830/2016, para 7.18.

20 See for example, CCPR/C/135/D/2830/2016, para. 7.17, CCPR/C/123/D/2318/2013 para. 7.8, 8, CCPR/C/130/D/2727/2016 para. 7.14, CCPR/C/130/D/2757/2016 para. 9.16, CCPR/C/131/D/2635/2015 paras. 7.8-7.12.

21 CCPR/C/130/D/2727/2016 para. 7.8.

restrictions result in institutionalized discrimination and stigmatization and exacerbate negative stereotypes based on sexual orientation and gender identity.[22]

The Committee on the Rights of the Child has highlighted, in relation to similar legislation, that instead of protecting children, such legislation "encourages stigmatization of and discrimination against LGBTI persons, including children, and children of LGBTI families" which runs counter to the Convention on the Rights of the Child.[23] The Committee has called on States to ensure that children who are lesbian, gay, bisexual or transgender or children of LGBT parents are not subjected to any form of discrimination or hate crimes by raising the public's awareness of equality and non-discrimination on the basis of sexual orientation and gender identity.[24] The Committee has also called on States to ensure the right to non-discrimination on all grounds, including sexual orientation, for children including in the context of effective access to the digital environment, including in relation to health, sexual and reproductive health and sexuality, among others.[25]

In addition to United Nations human rights mechanisms, other international mechanisms, including the European Commission for Democracy through Law (Venice Commission), of which Portugal is a member, have examined legislation establishing restrictions on freedom of expression based on sexual orientation and/or gender identity and found it to be in violation of international human rights standards,[26] noting also that "excluding objective information about different forms of sexual orientation, gender identity, gender expression and sex characteristics from the curriculum on sex education" contributes to "creating an unsafe and unfriendly environment where LGBTI children can be subject to bullying, harassment and even health-related risks."[27] Such concerns were also highlighted in the recent ruling of the Court of Justice of the European Union in case C-769/22.[28]

Rights of intersex persons and protection of intersex children from harmful practices

Draft Law 391/XVII/1 proposes the repeal of Law 38/2018 of 7 August 2018, which, under Article 4, guaranteed the right of all persons to maintain their primary and secondary sex characteristics, and under Article 5, prohibited treatments and surgical, pharmacological or other interventions that imply modifications to the body and sexual characteristics of an intersex child before they manifest their gender identity, except in cases of proven risk to their health. Draft Law 391/XVII/1 stipulates in Article 4 modifications to the proposed reinstated Law 7/2011, including modifying Article 2.2 of that law with the following text "Individuals with physical and biological characteristics of both sexes, also known as hermaphrodites, are entitled to legal recognition, provided they present a medical certificate, from the age of 16, or

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22 CCPR/C/UKR/CO/7, para.10; CCPR/C/RUS/CO/8 para. 12.
23 CRC/C/RUS/CO/4-5, 2014, paras. 24-25.
24 CRC/C/RUS/CO/6-7, 2024, para. 17.
25 CRC/C/GC/25, paras. 11, 94.
26 See for example, https://www.coe.int/en/web/venice-commission/-/cdl-ad-2021-050-e and https://www.coe.int/en/web/venice-commission/-/cdl-ad-2013-022-e.
27 Venice Commission, CDL-AD(2021)050 paras. 78-80; CDL-AD(2021)029, paras. 49-50.
28 Court of Justice of the European Union, Judgment: C-769/22 Commission v Hungary, 21 April 2026.

before that age with the express authorization of their parents or legal guardians, when, according to medical monitoring, puberty has revealed the predominant sexual pattern and corresponding psychological development." Article 5 stipulates in a new provision 4-C that "everyone has the right to retain their sexual characteristics" and "forced transition practices to another sex are prohibited".

The proposed language in Article 2.2 raises concerns not only in terms of outdated and inaccurate terminology ("hermaphrodite") and definitions ("with physical and biological characteristics of both sexes"), but also regarding the protection of bodily autonomy. In Human Rights Council resolution 55/14, "intersex persons" are defined more broadly than in Article 2, as "persons with innate variations in sex characteristics, that is persons who are born with sex characteristics that do not fit typical definitions for male or female bodies, including sexual anatomy, reproductive organs and hormonal or chromosome patterns".[29] The proposed language in Article 4-C.2 "forced transition practices to another sex" is also significantly narrower than the protections in Article 5 of Law 38/2018.

As such, if it were adopted, Law 391/XVII/1 would reduce protection of intersex children from harmful practices, including "medically unnecessary or deferrable interventions, which may be irreversible, with respect to sex characteristics, performed without the full, free and informed consent of the person, and in the case of children without complying with the provisions of the Convention on the Rights of the Child".[30] OHCHR and UN human rights mechanisms, including the Human Rights Committee, Committee against Torture, Committee on the Rights of the Child, Committee on the Elimination of Discrimination against Women, Committee on the Rights of Persons with Disabilities, Special Rapporteurs on health and torture, among others, have emphasized that medically unnecessary interventions intended to modify the physical appearance and traits of intersex persons, including children, without the full, free and informed consent of the individual concerned, violate the human rights of intersex persons, including their rights to physical and mental integrity, to freedom from torture or other cruel, inhuman or degrading treatment or punishment and to health.[31]

Separately, draft Law 479/XVII/1 stipulates in Article 3.3 that "the provisions of the preceding paragraphs do not apply to cases of minors with proven sexual ambiguity or endocrinological or genetic diseases, duly accompanied by a medical and multidisciplinary team", thereby exempting such children from the proposed prohibition of "hormonal or other treatments and interventions in minors under 18 years of age". While this draft law stipulates that its provisions are applicable "in the context of gender incongruence or dysphoria", the language "minors with proven sexual ambiguity or endocrinological or genetic diseases" is not in line with human rights terminology as reflected in Human Rights Council resolution 55/14,

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29 A/HRC/RES/55/14. See also A/HRC/60/50.

30 A/HRC/RES/55/14. See also A/HRC/60/50.

31 A/HRC/60/50 para. 10. See also CCPR/C/KEN/CO/4 para. 13(e), CAT/C/FRA/CO/7 paras. 34-35, CRC/C/GBR/CO/5 para. 47(c)-(e), CEDAW/C/MEX/CO/9 para. 22, CRPD/C/NZL/CO/2-3 para. 36(b), OHCHR, Technical Note on the Human Rights of Intersex People: Human Rights Standards and Good Practices (2023).

and could result in a significant reduction in the protection of intersex children from harmful practices, including in medical contexts.

Blanket prohibition in relation to access to any gender-affirming care for all children, including adolescents, regardless of individual circumstances

Draft Law 479/XVII/1 "expressly prohibits hormonal or other treatments and interventions in minors under 18 years of age that are intended to suppress or block puberty, or to induce characteristics corresponding to a sex different from their biological sex, in the context of gender incongruence or dysphoria." This includes a prohibition "to prescribe, dispense, or administer to minors under 18 years of age any medications, hormonal therapies, pharmacological treatments, or other substances intended to block puberty or induce characteristics corresponding to a sex different from the minor's biological sex, in the context of gender incongruence or dysphoria."

Draft Law 391/XVII/1 stipulates that "Any practices that result in the chemical or physical mutilation of the sexual organs of children and young people are prohibited, including medical interventions in the context of gender dysphoria for minors, namely: a) The administration of puberty blockers, hormones, or any other drugs that may temporarily or permanently alter the primary or secondary sexual characteristics of minors; b) It is also prohibited to perform sex reassignment surgeries on minors."

OHCHR recognizes the scientific, legal, ethical and human rights debate, dialogue and scrutiny in relation to this issue.[32] Safeguards in relation to children's access to gender-affirming treatment are appropriate, in line also with safeguards on access to medical care and treatment for children more broadly. However, it is important that such safeguards are fully in compliance with international human rights law.[33] Adoption and implementation of such

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[32] OHCHR also notes recent scientific reviews that have been carried out in other countries. Even where they advocate a more cautious approach, recent reviews still recommend, for example, that puberty blockers should remain available to children under specific conditions. They also recommend that while caution should be exercised, masculinising/feminising hormones should still be available for children older than 16, where there is a clear clinical rationale, and where every case is reviewed by a multi-disciplinary medical team. United Kingdom, Cass Independent review of gender identity services for children and young people: Final report (2024), https://cass.independent-review.uk/home/publications/final-report/.

[33] For example: the right to non-discrimination, as protected by the International Covenant on Civil and Political Rights (Arts 2 and 26), the International Covenant on Economic, Social and Cultural Rights (Art. 2), Convention on the Rights of the Child (Art. 2), Convention on the Elimination of All Forms of Discrimination against Women (Art. 2), the right to health (ICESCR Art. 12, CRC Art. 24), the right of the child to express their views freely and to be heard (CRC Art. 12) and for their best interests to be a primary consideration in all actions that concern them (CRC Art. 3). For example, the Committee on the Rights of the Child has emphasized in relation to the right of the child to health, that States must respect and uphold the right to non-discrimination (including based on gender identity), the best interests of the child, the right of the child to be heard, and respect for the evolving capacities of the child. CRC/C/GC/15 paras. 8, 12-15, 19-22. The Committee on the Rights of the Child has stressed that "when determining best interests, the child's views should be taken into account, consistent with their evolving capacities and taking into consideration the child's characteristics. States parties need to ensure that appropriate weight is afforded to the views of adolescents as they acquire understanding and maturity." CRC/C/GC/20 para. 22.

safeguards should take into account other medical treatment that children may be able to consent to in the jurisdiction, and considerations with regards to the age at which a child may consent to such treatment. It is critical to ensure proportionality and balancing legitimate potential risks as well as benefits for the individuals concerned, based on credible evidence.[34]

In this context, an absolute prohibition on all gender-affirming treatment for all children, regardless of age, raises concerns in relation to a range of human rights, including the rights to health and non-discrimination, the right of the child to express their views freely and to be heard, and for their best interests to be a primary consideration, particularly in relation to the principle of proportionality. This is particularly the case for adolescents, for whom capacity to provide free and informed consent has been duly assessed and attested by relevant professionals, and for whom an evidence-based assessment by a multi-disciplinary team of medical professionals indicates that access to some forms of treatment, including reversible treatment, would be in the best interests of the concerned child, including their right to physical and mental health, and with attention to the right of the child to be heard, and respect for their evolving capacities. It would also be critical to ensure that proposals that would have a significant impact on the human rights situation of trans and gender-diverse children be the subject of consultation with them to ensure that their right to be heard is respected.

The human rights situation of transgender and intersex persons in Portugal

In its latest survey on the human rights situation of LGBTI persons in Europe, the European Union Agency for Fundamental Rights found that 77 per cent of transgender women in Portugal reported discrimination and 78 per cent reported harassment in the previous 12 months on the basis of their gender identity – with the figures for trans men being 52 per cent and 57 per cent, and for intersex persons being 48 per cent and 65 per cent, respectively.[35] The United Nations Human Rights Committee has expressed concern about "reports of intolerance, prejudice, hate speech and hate crimes against vulnerable and minority groups, including [...] lesbian, gay, bisexual and transgender persons, particularly in the media and on social networks."[36] Against this background, OHCHR is concerned that the draft laws risk exacerbating the human rights situation of transgender and intersex persons in Portugal.

OHCHR
August 2026

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[34] In this context, the Committee on the Rights of the Child has for example recommended to a State party that they "urgently address the long waiting times faced by transgender and gender-questioning children in accessing specialized health-care services, improve the quality of such services and ensure that the views of such children are taken into account in all decisions affecting their treatment".CRC/C/GBR/CO/6-7 para. 41(d). See also the findings of the Committee on Economic, Social and Cultural Rights. E/CN.4/2000/4 para. 12, E/C.12/GC/22 paras. 11-24.

[35] EU Fundamental Rights Agency, EU LGBTIQ Survey III (2023), "Felt discriminated in the 12 months before the survey in any of 8 areas of life, Answer: Yes, Trans women" and "Experiences of harassment due to being LGBTI in the past 12 months", Answer: Yes, Trans women". https://fra.europa.eu/en/publications-and-resources/data-and-maps/2024/eu-lgbtiq-survey-iii.

[36] CCPR/C/PRT/CO/5 para. 14.