PRESS STATEMENT:

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INTERSEX PERSON’S IMPLEMENTATION COORDINATION COMMITTEE (IPICC)

COUNTING THE INTERSEX IN THE REPUBLIC OF KENYA: 24TH/25TH AUGUST 2019 CENSUS

In 2010, the people of the Republic of Kenya, gave themselves the Constitution of Kenya (CoK). This Constitution is a living document which obligates in Article 3(1) every person to Respect, Uphold and Defend the Constitution. This Constitution, also obligates both state organs and officers in Articles 19 and 20 to ensure that they use a human rights based approach while exercising their mandate and functions. The Constitution Article 27 protects all persons in Kenya from discrimination due to their sex or birth, among other parameters. Further Sessional Paper No. 3 of 2014 on the Human Rights Policy and Action Plan, obligates all state agencies to ensure human rights is integrated in all their activities and that no one is excluded nor discriminated. Kenya has sign up to the Sustainable Development Goals (SDG) 2030 to ensure that no one is left behind. An inclusive society therefore ensures that everyone counts, everyone is counted and that their voice counts. Stuart Milk, a human rights activist, says that,

“We are less when we do not include everyone.”
National Statistics

On 24th/25th August 2019 in the upcoming Kenya Household Population Census, the Republic of Kenya will be the first country in the world to organize, incorporate in its enumeration tools and train the enumerators to count Intersex person under the leadership of the Kenya National Bureau of Statistics (KNBS). Code 3 is the new third sex marker which will ensure that for the first time intersex persons will be counted separately from the male in Code 1 and female in Code 2.

This inclusion of intersex persons is a culmination of over 12 years of public interest litigation, public awareness, advocacy and dialogue with both state and none state institutions and actors. It is important to note that there is no official state data on intersex persons and therefore the capturing of actual statistics of this marginalized and vulnerable group of people and who have suffered for years in silence will be ground breaking.

The UN Free and Equal Campaign, initiated by the UN Office for Human Rights estimates that in every population there are 0.05% to 1.7% children born intersex\(^1\). Using the KNBS 2018 population statistical estimates of 47,848,479, this would translate to about 23,925 to 813,425 intersex persons born in Kenya.

Who is an intersex?

An intersex person is historically referred to as a hermaphrodite though this word is derogatory. In Kiswahili they are known as Huntha. Intersex is a term coined in the 1950’s and refers to someone born with ambiguous genitalia, gonads or reproductive organs that are ambiguous, and, mixed chromosomes or hormones that are not within the typical binary of male or female. It therefore means that biologically an intersex’s sex characteristics cannot be classified biologically as a boy or a girl at birth or later on in life!

Historically, intersex children are taboo babies who are usually killed at birth in many cultures, while others die at birth due to hormonal deficiencies, while others commit suicide due to stigma, social exclusion and ridicule in the community. They usually drop

\(^1\)See Human rights and intersex people - https://rm.coe.int/16806da5d4
out of school at the onset of puberty and are exposed to many medical procedures to ‘normalise’ them to make them fit into the male or female anatomy.

**How has Kenya protected intersex persons?**

There have been two public interest intersex cases filed in the High Court of the Republic of Kenya. The first case was in 2007 the *RM Case* (RM was a convict detained at Kamiti Maximum Prison for males) and decided in 2010. The three judge bench ordered that the human dignity of an intersex person must be protected at all times and should not be subjected to torture, cruel, inhumane, degrading treatment or punishment. RM was awarded KES500,000/= in damages and the Kenya Prisons Service (KPS) was ordered to use technology during search.

The second case was in 2013 in the *Baby A Case* (Baby A had no sex marker in her birth notification paper due to sex ambiguity) and decided in 2014. The judge ordered the Attorney General to among other things inform the court on the institution responsible for counting and take on the responsibility of informing the government on the number and distribution of intersex persons in the Republic of Kenya.

In 2014, *The Persons Deprived of Liberty Act* was passed. In Sections 2, 10 and 12 provided the first definition of an intersex persons, to protect and respect an intersex person during search and detention. And that an intersex person must be treated with respect, detained separately and has a right to choice the sex of the officer to search their person.

In 2016, the 11th *Parliament in the Departmental Committee on Administration and National Security of the National Assembly* made a ‘Report on the Consideration of a Petition by Concerned Citizens Regarding Recognition of Persons with Gender Disorder Conditions’. The committee directed the Ministry of Interior to ‘take immediate administrative action to recognize the intersex Persons by adding a marker ‘intersex’ on birth notification and birth certificates’. The committee further recommended the Registrar of Persons, the Kenya Bureau of Statistics and the Ministry of Health to ‘provide statistics for all the intersex persons by ensuring that such statistics are captured in the national census and other socioeconomic surveys to facilitate planning’.
In 2017, *The National Police Service, Standing Orders*, Paragraph 15.4 also provides for the protection of the rights of intersex persons upon arrest and detention. An intersex persons should be searched upon arrest by a person of their choice (fe/male) and detained separately in a police station.

On 26<sup>th</sup> May 2017, the Hon. Attorney General, gazette (No.4904) the *Intersex Taskforce on policy, legal, institutional and administration reforms regarding the protection and treatment of intersex persons in the Republic of Kenya* under the leadership of the Kenya Law Reform Commission (KLRC) and the Kenya National Commission on Human Rights (KNCHR) as the secretariat.

On 21<sup>st</sup> March 2019, the Intersex Taskforce presented its final report and recommendations to the Hon. Attorney General. On 15<sup>th</sup> April 2019, there was a public launch of the Intersex Taskforce report in Nairobi City County.

On 2<sup>nd</sup> April 2019, the Hon. Attorney General operationalized the *Intersex Persons Implementation Coordination Committee (IPICC)* under the leadership and secretariat of the Kenya National Commission on Human Rights (KNCHR). IPICC was mandated to coordinate the implementation of the prioritized recommendations of the Intersex Taskforce Report, to assist in the formulation and dissemination (in appropriate languages) of the Intersex Taskforce Report, and to coordinate, build capacity and facilitate collaborations among various stakeholders and interest groups in both private and public institutions.

**Counting Intersex Persons**

That is why we are gathered here today under the IPICC leadership. That has been the intersex journey in Kenya since 2007 to 2019 when the KNBS included Code 3 in the census tools and training manual. The enumeration or counting of intersex persons will provide a statistical framework to include intersex persons in national planning and budgeting for national development. This will particularly be useful as we plan in the education, health and employment sectors.
The census enumerators will seek information that is personal in all households. The enumerators are well trained for this information collection. Importantly, they have each taken an oath of secrecy. This means that all information including information regarding the sex marker information will be treated utmost confidentiality.

IPICC therefore calls upon each and every one of us to share this information widely and encourage intersex persons, and the parents or guardians of intersex children to stand up and be counted under Code 3. This means that though an intersex child was recorded at birth as ‘male’ or ‘female’ or?? based on the doctors or mid wives or parents best guess, they now have an opportunity to record their sex characteristic as ‘intersex’. The head of household will be expected to verbally respond to the enumerator on the sex question and the enumerator will tick ‘I’ in the digital enumeration gadget accordingly.

We appeal and urge all duty bearers especially chiefs, assistance chiefs, religious and traditional leaders and elders, human rights defenders, paralegals, teachers, social and health workers, public and state officers, and the general public, share this information widely so that intersex persons are counted on 24th/25th August night under Code 3. As I end, Chimamanda Ngozi Adichie advises us that,

“The measure of our humanity lies, in part, in how we think of those different from us. We cannot-should not- have empathy only for people who are like us”.

Let us count the intersex persons and give them a voice in our national plans and decision making.

#IntersexCensusKE

Signed:
Jedidah Waruhiu (Commissioner) - Kenya national Commission on Human Rights-KNCHR)

Chairperson
INTERSEX PERSON’S IMPLEMENTATION COORDINATION COMMITTEE (IPICC)