

Intersex Genital Mutilations Human Rights Violations Of Persons With Variations Of Sex Anatomy



NGO Report for LOIPR
to the 8th Report of France
on the Convention against Torture (CAT)

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Introduction

Intersex, IGM and Human Rights in France

IGM practices are known to cause severe, lifelong physical and psychological pain and suffering, and have been repeatedly **recognised by multiple UN treaty bodies¹ including CAT** as constituting torture or ill-treatment, a harmful practice and violence. This NGO Report demonstrates that the current **harmful medical practice on intersex persons in France** – advocated, facilitated and paid for by the State party – **persists unchanged in spite of the last Concluding observations by this Committee (paras 42-43)**, as well as of those by **CRC** and **CEDAW²**, and constitutes a **serious breach** of France’s obligations under the Convention.

About the Rapporteurs

This NGO report has been prepared by the French intersex NGO *GIS / Alter Corpus* and the intersex persons and advocates *Nadine Coquet* and *Vincent Guillot* in collaboration with the international intersex NGO *Zwischengeschlecht.org / StopIGM.org*.

- The French Association **GISS | Alter Corpus³**, composed of persons concerned, lawyers and scholars, aims to protect and promote, legally and through their advocacy, the rights of intersexed persons and persons belonging to sex and gender minorities. It is regularly consulted in France and internationally by various human rights and ethics bodies. It participates in the drafting of legal texts for the recognition of the rights of intersex persons.
- **Nadine Coquet** is a French intersex person, survivor of IGM practices, intersex human rights defender and a member of OII Francophonie. Nadine has testified to IGM practices at a hearing of the French Senate.⁴
- **Vincent Guillot** is a French intersex person, survivor of IGM practices and an intersex human rights defender for more than a decade. Vincent is a co-founder of Organisation Intersex International (OII).⁵
- **StopIGM.org / Zwischengeschlecht.org** is an international intersex human rights NGO based in Switzerland, working to end IGM practices and other human rights violations perpetrated on intersex people, according to its motto, “*Human Rights for Hermaphrodites, too!*”⁶ According to its charter,⁷ StopIGM.org works to support persons concerned seeking redress and justice, and regularly reports to UN treaty bodies, mostly in collaboration with local intersex advocates and organisations.⁸ In 2015 StopIGM.org in collaboration with

1 **CAT, CRC, CRPD, SPT, SRT, SRSG VAC, COE, ACHPR, IACHR** (2016), “End violence and harmful medical practices on intersex children and adults, UN and regional experts urge”,

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>

2 CRC/C/FRA/CO/5, paras 47-48; CEDAW/C/FRA/CO/7-8, paras 18e-f + 19e-f

3 Groupement d’information et de soutien sur les questions sexuées et sexuelles (Information and support group on gender and sexual issues). <https://hal.archives-ouvertes.fr/hal-01627306/document>

4 http://www.liberation.fr/debats/2016/05/31/stop-aux-mutilations-des-personnes-intersexuees_1456398

5 http://www.histoiresordinaires.fr/Intersexe-Vincent-Guillot-sort-de-la-nuit_a1330.html

<http://www.lefigaro.fr/international/2013/11/01/01003-20131101ARTFIG00204-l-allemande-devient-le-premier-pays-europeen-a-reconnaitre-un-troisieme-sexe.php>

6 <http://Zwischengeschlecht.org/> English pages: <http://StopIGM.org/>

7 <http://zwischeneschlecht.org/post/Statuten>

8 <http://intersex.shadowreport.org/>

French intersex advocates Vincent Guillot and Nadine Coquet first reported the on-going practice in France to CRC,⁹ CAT¹⁰ and CEDAW.¹¹ In 2016 in Paris StopIGM.org facilitated non-violent protests and an Open Letter with 239 signatures denouncing French IGM clinics and universities and their complicity in international medical networks promoting and practicing IGM.¹²

Methodology

This thematic NGO report follows up on the **2016 thematic CAT NGO Report for France** by partly the same rapporteurs,¹³ and the resulting **2016 Concluding observations for France** by this Committee (paras 34-35).

9 <http://intersex.shadowreport.org/public/2015-CRC-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

10 <http://intersex.shadowreport.org/public/2016-CAT-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

11 <http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

12 Open Letter of Concern to 55th ESPE 2016 and French DSD Universities and Clinics by Persons Concerned, Partners, Families, Friends and Allies, September 2016,
http://zwischen-geschlecht.org/public/Open_Letter_ESPE_2016.pdf

13 <http://intersex.shadowreport.org/public/2016-CAT-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

2016 Concluding Observations on Intersex (CAT/C/FRA/CO/7, paras 34-35)

Intersex persons

34. The Committee is concerned about reports of unnecessary and sometimes irreversible surgical procedures performed on intersex children without their informed consent or that of their relatives and without their having all possible options always explained to them. It is also concerned that these procedures, which are purported to cause physical and psychological suffering, have not as yet been the object of any inquiry, sanction or reparation. The Committee regrets that no information was provided on specific legislative and administrative measures establishing the status of intersex persons (arts. 2, 12, 14 and 16).

35. **The Committee recommends that the State party:**

(a) **Take the necessary legislative, administrative and other measures to guarantee respect for the physical integrity of intersex individuals, so that no one is subjected during childhood to non-urgent medical or surgical procedures intended to establish one's sex;**

(b) **Ensure that the persons concerned and their parents or close relatives receive impartial counselling services and psychological and social support free of charge;**

(c) **Ensure that no surgical procedure or medical treatment is carried out without the person's full, free and informed consent and without the person, their parents or close relatives being informed of the available options, including the possibility of deferring any decision on unnecessary treatment until they can decide for themselves;**

(d) **Arrange for the investigation of cases of surgical or other medical treatment reportedly carried out on intersex individuals without their informed consent and take steps to provide redress, including adequate compensation, to all victims;**

(e) **Conduct studies into this issue in order to better understand and deal with it.**

A. Misrepresentation of IGM as “LGBT” or “Health Care” Issue

1. Intersex is NOT THE SAME as LGBT or SOGI

Unfortunately, there are often interrelated **harmful misconceptions about intersex** still prevailing in public, notably if intersex is counterfactually described as being the same as or a subset of LGBT or SOGI, e.g. if intersex and/or intersex status are represented as a sexual orientation (like gay or lesbian), and/or as a gender identity, as a subset of transgender, as the same as transsexuality, or as a form of sexual orientation.

The underlying reasons for such harmful misconceptions include **lack of awareness**, third party groups **instrumentalising intersex as a means to an end**^{14 15} for their own agenda, and State parties **trying to deflect** from criticism of involuntary intersex treatments.

Intersex persons and their organisations have spoken out clearly against instrumentalising or misrepresenting intersex issues,¹⁶ maintaining that IGM practices present a **distinct and unique issue** constituting significant human rights violations, which are different from those faced by the LGBT or SOGI community, and thus need to be **adequately addressed in a separate section as specific intersex issues.**

Also **human rights experts** are increasingly warning of the **harmful conflation** of intersex and LGBT.¹⁷

Regrettably, **these harmful misrepresentations seem to be on the rise also at the UN**, for example in recent **UN press releases** and **Summary records** misrepresenting IGM as “*sex alignment surgeries*” (i.e. voluntary procedures on transsexual or transgender persons), IGM survivors as “*transsexual children*”, and intersex NGOs as “*a group of lesbians, gays, bisexuals, transgender and intersex victims of discrimination*”,¹⁸ and again IGM survivors as “*transgender children*”,¹⁹ “*transsexual children who underwent difficult treatments and surgeries*”, and IGM as a form of “*discrimination against transgender and intersex children*”²⁰ and as “*sex assignment surgery*” while referring to “*access to gender reassignment-related treatments*”.²¹

Particularly **State parties** are constantly **misrepresenting intersex and IGM as sexual orientation or gender identity issues** in an attempt to **deflect from criticism** of the serious human rights violations resulting from IGM practices, instead referring to e.g. “*gender reassignment surgery*” (i.e. voluntary procedures on transsexual or transgender persons) and “*gender assignment surgery for children*”,²² “*a special provision on sexual orientation and*

14 CRC67 Denmark, <http://stop.genitalmutilation.org/post/CRC67-Intersex-children-used-as-cannon-fodder-LGBT-Denmark>

15 CEDAW66 Ukraine, <http://stop.genitalmutilation.org/post/Ukraine-Instrumentalising-Intersex-and-IGM-for-LGBT-and-Gender-Politics>

16 For references, see 2016 CEDAW France NGO Report, p. 45. <http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

17 For example ACHPR Commissioner Lawrence Murugu Mute (Kenya), see <http://stop.genitalmutilation.org/post/ACHPR-African-Commissioner-warns-Stop-conflating-intersex-and-LGBT>

18 CAT60 Argentina, <http://stop.genitalmutilation.org/post/UN-Press-Release-calls-IGM-survivors-transsexual-children-CATArgentina-UNCAT60>

19 CRC77 Spain, <http://stop.genitalmutilation.org/post/UN-Press-Release-mentions-genital-mutilation-of-intersex-children>

20 CRC76 Denmark, <http://stop.genitalmutilation.org/post/UN-Press-Release-calls-IGM-survivors-transsexual-children-CRC-Denmark-UNCRC67>

21 CAT/C/DNK/QPR/8, para 32

22 CRC73 New Zealand, <http://stop.genitalmutilation.org/post/NZ-to-be-Questioned-over-Intersex-Genital->

gender identity”, “*civil registry*” and “*sexual reassignment surgery*”²³, transgender guidelines²⁴ or “*Gender Identity*”^{25 26} when asked about IGM by e.g. Treaty bodies.

What’s more, **LGBT organisations** (including “LGBTI” organisations without actual intersex representation or advocacy) are using the ubiquitous misrepresentation of intersex = LGBT to **misappropriate intersex funding**, thus depriving actual intersex organisations (which mostly have no significant funding, if any) of much needed resources.²⁷

2. Misrepresenting Genital Mutilation as “Health Care”

An interrelated, alarming new trend is the **increasing misrepresentation of IGM as “health-care issue”** instead of a serious human rights violation, and the **promotion of “self-regulation” of IGM by the current perpetrators**^{28 29 30} – instead of effective measures to finally end the practice (as repeatedly stipulated also by this Committee).

Even worse, **Health ministries** construe UN Treaty body Concluding observations falling short of explicitly recommending legislation to criminalise or adequately sanction IGM as an **excuse for “self-regulation” promoting state-sponsored IGM practices to continue with impunity.**³¹

[Mutilations-by-UN-Committee-on-the-Rights-of-the-Child](#)

23 CCPR120 Switzerland, <http://stop.genitalmutilation.org/post/Pinkwashing-of-Intersex-Genital-Mutilations-at-the-UN-CCPR120>

24 CAT56 Austria, <http://stop.genitalmutilation.org/post/Geneva-UN-Committee-against-Torture-questions-Austria-over-Intersex-Genital-Mutilations>

25 CAT60 Argentina, <http://stop.genitalmutilation.org/post/CAT60-Argentina-to-be-Questioned-on-Intersex-Genital-Mutilation-by-UN-Committee-against-Torture>

26 CRPD18 UK, <http://stop.genitalmutilation.org/post/UK-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-Persons-with-Disabilities-CRPD>

27 For example in Scotland (UK), LGBT organisations have so far collected at least £ 135,000.– public intersex funding, while actual intersex organisations received ZERO public funding, see 2017 CRPD UK NGO Report, p. 14, <http://intersex.shadowreport.org/public/2017-CRPD-UK-NGO-Coalition-Intersex-IGM.pdf>

Typically, during the interactive dialogue with CRPD, the UK delegation nonetheless tried to sell this glaring misappropriation as “supporting intersex people”, but fortunately got called out on this by the Committee, see transcript (Session 2, 10:53h + 11:47h), <http://stop.genitalmutilation.org/post/UK-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-Persons-with-Disabilities-CRPD>

28 For example Amnesty (2017), see <http://stop.genitalmutilation.org/post/Amnesty-Report-fails-Intersex-Children-and-IGM-Survivors>

29 For example FRA (2015), see Presentation OHCHR Expert Meeting (2015), slide 8, http://stop.genitalmutilation.org/public/S3_Zwischengeschlecht_UN-Expert-Meeting-2015_web.pdf

30 For example CEDAW Italy (2017), see <http://stop.genitalmutilation.org/post/Major-Setback-for-Intersex-Human-Rights-at-the-UN>

31 See for example Ministry of Health Chile (2016), <http://stop.genitalmutilation.org/post/Circular-7-step-back-for-intersex-human-rights-in-Chile>

B. IGM practices in France: State-sponsored and pervasive

1. IGM in France: Still no protections, Government fails to act

Allover France, all forms of **IGM practices remain widespread and ongoing**, persistently **advocated** by the official **public medical body** “*Haute Autorité de Santé (HAS)*”, including in “*National Guidelines*”, **prescribed and perpetrated** by French public **University or Regional Children’s Clinics** (including, but not limited to the government-appointed “*Reference centres for rare diseases of sex development*”), and **paid for** by the **public Health System** – as the **actors themselves publicly admit**, as well as to the psycho-social justification of the surgeries, and to knowledge of the human rights criticism:

“As a child he was not born with just a variation of normal, he was born with a part of his body that did not work. So it's not... you shouldn't discriminate... same as if he had a serious anomaly... no. We must simply recognize that he was born with chromosomes that did not work, with hormones that did not work and if there is even a medical way to help them with hormones we must do so; if there are surgical means to help this child adapt to society, to social life today, we must not hesitate either.”

– Alaa El-Ghoneimi, Hôpital Universitaire Robert-Debré, Paris, 11.05.2018³²

“Let me be honest: the medical profession needs help. From time to time, as at the moment, we are faced with virulent, even aggressive comments. I hope you [the French Senate] heard the medical profession's message today.”

– Pierre Mouriquand, Centre Hospitalier Universitaire de Lyon, 25.05.2016³³

In contrast, **on the side of protections**, in **France** (CAT/C/FRA/CO/7, paras 32–33; CRC/C/FRA/CO/5, paras 47-48; CEDAW/C/FRA/CO/7-8, paras 17e-f + 18e-f) – same as in *Germany* (see CAT/C/DEU/CO/5, para 20; CRPD/C/DEU/CO/1, paras 37-38; CEDAW/C/DEU/CO/7-8, paras 23-24), *Switzerland* (see CAT/C/CHE/CO/7, para 20; CRC/C/CHE/CO/2-4, paras 42-43; CEDAW/C/CHE/CO/4-5, paras 38-39), *Hong Kong* (see CAT/C/CHN-HKG/CO/4-5, paras 28-29), *Denmark* (see CAT/C/DNK/CO/6-7, paras 42-43; CRC/C/DNK/CO/5, para 24), and in many more State parties,³⁴ there are

- **no legal or other protections** in place to ensure the rights of intersex children to physical and mental integrity, autonomy and self-determination, and **to prevent IGM practices**
- **no measures** in place to ensure **data collection and monitoring** of IGM practices
- **no legal or other measures** in place to ensure the **accountability** of IGM perpetrators
- **no legal or other measures** in place to ensure **access to redress and justice** for adult IGM survivors

32 Interview in segment “« Intersexualité : première plainte pour mutilation », Le magazine de la Santé, TV France 5, 11.05.2018, see <https://sexandlaw.hypotheses.org/388>

33 Sénat, Session Ordinaire de 2016-2017, Maryvonne Blondin, Corinne Bouchoux, Rapport d'Information fait au nom de la délégation aux droits des femmes et à l'égalité des chances entre les hommes et les femmes sur les variations du développement sexuel : lever un tabou, lutter contre la stigmatisation et les exclusions, statement of Pierre Mouriquand, p. 194, <https://www.senat.fr/rap/r16-441/r16-4411.pdf>

34 See <http://stop.genitalmutilation.org/post/IAD-2016-Soon-20-UN-Reprimands-for-Intersex-Genital-Mutilations>

2. IGM practices in France: Pervasive and unchallenged, advocated by State party

All forms of IGM practices remain widespread and ongoing, facilitated and paid for by the State party via the public Health System and advocated by the official public medical body “Haute Autorité de Santé (HAS)”, including in “National Guidelines”:

- **IGM 3: Sterilising Procedures** plus arbitrary imposition of hormones as advocated by the official public medical body “Haute Autorité de Santé (HAS)” in the new 2018 “National Androgen Insensitivity Guidelines”³⁵ for “adolescents” with Partial Androgen Insensitivity Syndrome (PAIS):

“Gonadectomy should be performed in the prepubertal period to avoid virilization at puberty. After the gonads have been removed, puberty inducing treatment will then be necessary (see chapter 4.3.2). The surgical procedures for gonadectomy and vaginoplasty are identical to those for CAIS patients.” (p. 13)

“3.5.2 Tumor risk [...]

The prophylactic removal of gonads and the age at which it should be performed are currently under debate. The main reasons reported by the patients are the refusal of surgery, the wish not to have to take substitution treatment but also the psychological impact of the operation. The recommended attitude is to perform prophylactic gonadectomy after puberty, thus allowing optimal spontaneous pubertal development and the possibility of involving the adolescent in the decision.

Despite a low risk of tumour transformation, the family may want the procedure to be performed before puberty. In this case, it is desirable to discuss with the family the value of waiting until puberty and involving the adolescent in the decision. When the gesture is nevertheless envisaged, its realization must be discussed in multidisciplinary team RCP.” (p. 10)

- **IGM 2: “Feminising” Genital Surgeries:** The “National CAH Guidelines”³⁶ promoting early surgery “in the first months of life” in order to “minimis[e] psychological consequences for the child and the parents”, as documented in our 2016 Thematic NGO report (p. 8-9, fn. 8),³⁷ **remain in force unchanged.**

And the new 2018 “National Androgen Insensitivity Guidelines”³⁸ prescribe for “girls” with Partial Androgen Insensitivity Syndrome (PAIS):

“Where sex selection at birth has been female, the appropriateness of surgery (clitoris, vulva, vagina) should be discussed in the multidisciplinary team RCP. It can sometimes [!] be postponed until the child reaches the age where he or she can participate in questions and decisions

35 Haute Autorité de Santé (HAS) (2017), Protocole National de Diagnostic et de Soins (PNDS). Insensibilités aux androgènes. Centre de référence du développement génital: du fœtus à l'adulte, https://www.has-sante.fr/portail/upload/docs/application/pdf/2018-01/pnds_ais_version_finale.pdf

36 Haute Autorité de Santé (HAS) (eds.), Hyperplasie congénitale des surrénales par déficit en 21-hydroxylase. Protocole national de diagnostic et de soins pour les maladies rares (p. 50), online: https://www.has-sante.fr/portail/upload/docs/application/pdf/2011-05/ald_hors_liste_-_pnds_sur_lhyperplasie_congenitale_des_surrenales.pdf

37 <http://intersex.shadowreport.org/public/2016-CAT-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

38 Haute Autorité de Santé (HAS) (2017), Protocole National de Diagnostic et de Soins (PNDS). Insensibilités aux androgènes. Centre de référence du développement génital: du fœtus à l'adulte, https://www.has-sante.fr/portail/upload/docs/application/pdf/2018-01/pnds_ais_version_finale.pdf

concerning his or her body.” (p. 13)

“Post-operative complications of genital surgeries are frequent: [...], vaginal stenosis in girls.”
(p. 13)

“Clitoral reduction surgery may be considered when clitoral hypertrophy generates aesthetic but also functional discomfort in the event of painful erections. The main risks of this surgery are the loss of sensitivity or on the contrary the occurrence of painful scars. Patients should be well informed of these risks before any procedure.” (p. 13)

- **IGM 1: Masculinising” Genital Surgeries:** The new 2018 **“National Androgen Insensitivity Guidelines”**³⁹ prescribe for “boys” with Partial Androgen Insensitivity Syndrome (PAIS):

“Surgery of patients with PAIS raised in the male sex (correction of hypospadias, testicular lowering) is most often performed in the 2nd year of life. The surgery is based on the principles of hypospadias surgery. [...] Correction of anomaly(s) of testicular migration, peno-scrotal transposition or correction of the bifid aspect of the scrotum may be necessary. Reduction of gynecomastia is sometimes necessary in the peripubertal period[.]” (p. 13)

“Post-operative complications of genital surgeries are frequent: unsatisfactory cosmetic results, urethral failures (fistula, dehiscence), urinary difficulties (stenosis, urethrocele), sexual difficulties (persistent curvature of the penis, erectile dysfunction) in boys [...].” (p. 13)

- **IGM 4: Prenatal “Therapy” with Dexamethasone:**

“Dr Pierre Mouriquand. – [...] To avoid surgery, when hormonal treatment is prescribed during pregnancy to a woman who has a baby girl with CAH, the virilisation of the child can be significantly reduced. This treatment is very controversial because the side effects can be serious, not only in the mother - hypertension, stretch marks, diabetes - but also in the child who can present very important cognitive problems. These are the reasons why some countries - Sweden or the United States - have abandoned these hormone treatments.

Maryvonne Blondin, co-rapporteur. - What is the situation in France?

Dr Pierre Mouriquand. - We continue to prescribe them.”⁴⁰

39 Haute Autorité de Santé (HAS) (2017), Protocole National de Diagnostic et de Soins (PNDS). Insensibilités aux androgènes. Centre de référence du développement génital: du fœtus à l'adulte, https://www.has-sante.fr/portail/upload/docs/application/pdf/2018-01/pnds_ais_version_finale.pdf

40 Sénat, Session Ordinaire de 2016-2017, Maryvonne Blondin, Corinne Bouchoux, Rapport d'Information fait au nom de la délégation aux droits des femmes et à l'égalité des chances entre les hommes et les femmes sur les variations du développement sexuel : lever un tabou, lutter contre la stigmatisation et les exclusions, statement of Pierre Mouriquand, p. 188-189, <https://www.senat.fr/rap/r16-441/r16-4411.pdf>

C. France ignores Concluding Observations on Intersex

1. Recommendation (a) – Legislative and other measures to prevent IGM

(a) *Take the necessary legislative, administrative and other measures to guarantee respect for the physical integrity of intersex individuals, so that no one is subjected during childhood to non-urgent medical or surgical procedures intended to establish one's sex;*

Since June 2016, several French bodies have recognised that the inhuman and degrading treatment of intersex children in France continues. Lastly, on 22 May 2018 the **National Consultative Commission on Human Rights** (“*Commission nationale consultative des droits de l’homme, CNCDH*”) stated in its report “*Taking action against abuse in the health system: a necessity to respect fundamental rights*” (p. 17):⁴¹

“The CNCDH also considers that certain treatments inflicted on intersex persons are inhuman and degrading treatment. Indeed, in their national [Androgen Insensitivity] guidelines dated 2018[52], the [Haute Autorité de Santé] HAS takes an ambiguous position on the practice of sexual mutilation surgeries on intersex newborns. These surgeries, performed to bring the appearance of their genitals into line with the sex in which the child will be raised, without medical necessity, have serious lifelong consequences for patients and numerous complications.[53] Such surgeries are carried out in disregard of the person's consent, parents being forced to decide immediately, and without taking into account international standards of child protection, respect for the child's physical integrity, and the recommendations of the United Nations (Committee on the Rights of the Child, Committee against Torture, Committee on the Elimination of Discrimination against Women, 2016) and the Assembly of the Council of Europe (resolution 2191, 2017[54]).”

Earlier, it was President François Hollande who, on 17 March 2017 in a public statement, called for an end to genital mutilation of intersex children:⁴²

“I'm also thinking of the prohibition of surgical operations that intersex children are submitted to today, and which around the world are largely considered as mutilations.”

And in December 2016 the French “*Interministerial delegation on combatting racism, anti-semitism and anti-LGBT hatred (DILCRAH)*” had stated, also referring to the CAT, CRC and CEDAW recommendations for France:⁴³

“Stopping the surgeries and mutilations of intersex children

In 2016, France has been reprimanded three times for this issue by the UN: In January by the Committee on the Rights of the Child, in May by the Committee against Torture, and in July by the Committee on the Elimination of Discrimination against Women. Unless they are not imperative for medical reasons, these surgeries are mutilations and must stop.”

Despite these strong statements, nothing has changed in practice. On the contrary, on several occasions the **French authorities have demonstrated their continued refusal to comply with the Concluding Observations** unmistakably stipulating to “*take the necessary legislative, administrative and other measures*” to prevent IGM practices.

41 Commission nationale consultative des droits de l’homme (CNCDH), « Agir contre les maltraitances dans le système de santé : une nécessité pour respecter les droits fondamentaux »,

http://www.cncdh.fr/sites/default/files/180522_avis_maltraitances_systeme_de_sante.pdf

42 <http://stop.genitalmutilation.org/post/France-condemns-mutilations-of-intersex-children-proposes-prohibition>

43 Ibid.

In addition, the **Ministry of Health**, when Co-Rapporteur Vincent Guillot wrote in early 2018 to the Minister of Health asking her to **take all necessary measures to ban mutilating operations, in accordance with the recommendations of the Committee** and resolution 2191 (2017) of the Parliamentary Assembly of the Council of Europe, this letter remained unanswered for two months, **so that under French law it constitutes a rejection decision**. This rejection decision is **currently being challenged before the Council of State** by the association GISS | Alter Corpus.

Further, in September 2016 Vincent Guillot made a request to the **National Healthcare Insurances** (“*Union Nationale des Caisses d'Assurance Maladie, UNCAM*”) and the previous Minister of Health to **stop reimbursement for IGM practices**. The answer claimed that these acts carried out by medical doctors had a **therapeutic character**; the **request for stop of refunding was thus rejected**.

Moreover, at the beginning of 2018, the **VAT office within the Public Finance Directorate** was alerted by telephone of the problems raised by IGM practices, which are currently **considered by the tax authorities as having a therapeutic purpose**, so that they are exempt from VAT, with the office referring to the “majority opinion of doctors” and refusing to take action.

Moreover, **the official public medical body “Haute Autorité de Santé (HAS)”** was alerted by the association GISS of the illegal character of the new **2018 “National Androgen Insensitivity Guidelines”**.⁴⁴ Here again, HAS refused to respond and therefore to withdraw its guidelines encouraging mutilation. This decision has been challenged and is currently the **subject of an ongoing appeal**.⁴⁵

2. Recommendation (b) – Free psychosocial support

(b) Ensure that the persons concerned and their parents or close relatives receive impartial counselling services and psychological and social support free of charge;

While the **2018 “National Androgen Insensitivity Guidelines”**⁴⁶ claim, “*Early psychiatric and/or psychological support is crucial for patients and their families*” (p. 15), there is **no data available on actual provision of impartial psychosocial counselling** for parents and children/adolescents as stipulated in the Concluding Observations. Generally, **hospitals refuse to include intersex support groups** in multidisciplinary committee meetings.

What’s more, while **HAS’ own methodology for the elaboration of the national guidelines**⁴⁷ stipulates **consultation of persons concerned and their associations**, this was by no means the case for the **2018 “National Androgen Insensitivity Guidelines”**, where intersex persons and their organisations were **excluded from consultation**.

44 Haute Autorité de Santé (HAS) (2017), Protocole National de Diagnostic et de Soins (PNDS). Insensibilités aux androgènes. Centre de référence du développement génital: du fœtus à l'adulte, https://www.has-sante.fr/portail/upload/docs/application/pdf/2018-01/pnds_ais_version_finale.pdf

45 Available from the Rapporteurs on request

46 Haute Autorité de Santé (HAS) (2017), Protocole National de Diagnostic et de Soins (PNDS). Insensibilités aux androgènes. Centre de référence du développement génital: du fœtus à l'adulte, https://www.has-sante.fr/portail/upload/docs/application/pdf/2018-01/pnds_ais_version_finale.pdf

47 https://www.has-sante.fr/portail/upload/docs/application/pdf/2012-12/guide_methodologique_pnds.pdf

3. Recommendation (c) – Informed consent

(c) *Ensure that no surgical procedure or medical treatment is carried out without the person’s full, free and informed consent and without the person, their parents or close relatives being informed of the available options, including the possibility of deferring any decision on unnecessary treatment until they can decide for themselves;*

The French government makes it very clear that it **doesn’t care at all about informed consent of the intersex persons concerned**, but instead allows IGM to continue at the behest of doctors and parents.

In cases where intersex persons are consulted at all prior to the mutilating treatments carried out on them, **the consent they give is nevertheless not informed.**

The ongoing lies by doctors or withholding of information are evident from the above-mentioned 2018 “*National Androgen Insensitivity Guidelines*”.⁴⁸ There, on page 27, it is **recommended that doctors should not tell parents** the true nature of gonads if they do not agree with the sex that doctors have decided to assign to the child, but merely tell them that the girl will never be fertile and that it is necessary to remove her “useless” gonads.

This ongoing refusal of doctors to fully inform intersex persons (and also parents) was also highlighted in the Senate hearing (p. 184-185):⁴⁹

“Dr. Claire Bouvattier. – It is sometimes difficult for a doctor to tell a young teenager that she has no uterus, that she will never have a period and that she has a male karyotype. It is extremely painful for these young women. It is easier to lie, to make the decision instead of the child who is not old enough to make it and to impose it on the parents. It must be recognised that the power of the medical profession is great in the face of people distressed by the announcement of the diagnosis.

You also have to realise how difficult it is to hear, when you are a woman, that you have testicles, and support it psychologically. This is difficult for the patient, for the parents, but also for the doctor. In some situations, transparency can reveal its limits.”

4. Recommendation (d) – Redress and compensation

(d) *Arrange for the investigation of cases of surgical or other medical treatment reportedly carried out on intersex individuals without their informed consent and take steps to provide redress, including adequate compensation, to all victims;*

To this day, also in **France** the **statutes of limitation** prevent survivors of early childhood IGM practices to call a court because persons concerned often **do not find out** about their medical history until much later in life, which in combination with severe trauma caused by IGM practices often proves to amount to a severe obstacle,⁵⁰ and effectively **prohibit survivors of early**

48 Haute Autorité de Santé (HAS) (2017), Protocole National de Diagnostic et de Soins (PNDS). Insensibilités aux androgènes. Centre de référence du développement génital: du fœtus à l'adulte, https://www.has-sante.fr/portail/upload/docs/application/pdf/2018-01/pnds_ais_version_finale.pdf

49 Sénat, Session Ordinaire de 2016-2017, Maryvonne Blondin, Corinne Bouchoux, Rapport d'Information fait au nom de la délégation aux droits des femmes et à l'égalité des chances entre les hommes et les femmes sur les variations du développement sexuel : lever un tabou, lutter contre la stigmatisation et les exclusions, <https://www.senat.fr/rap/r16-441/r16-4411.pdf>

50 Globally, no survivor of early surgeries ever managed to have their case heard in court. All relevant court cases

childhood IGM practices to call a court.

This is evidenced by a **final court decision of the Highest Court (“*Court de Cassation*”) dated 6 March 2018,⁵¹ rejecting** the case of an IGM survivor wanting to lodge a complaint on the basis of article 222-10 of the Penal Code (aggravated violence resulting in mutilation or permanent disability) for having been submitted to non-consensual castration and “feminising” genital surgery as a child, with the court referring to **expired statutes of limitation.**⁵²

A **second case of an IGM survivor** born in 1979 who filed a complaint in 2016 before the criminal judge for mutilation intentional violence against a minor under 15 years of age, denouncing 7 non-consensual “masculinsing” genital surgeries between the age of 3 and 8, leaving the claimant with severe pain and suffering:

*«I’ve come to calculate everything I drink because every time I have to go to the bathroom, I feel like I’m peeing razor blades,» he says. «Sex is the same. I’m enjoying myself while having extreme pain!»*⁵³

Since the complaint was filed in 2016, there resulted no decision so far, with the case ongoing but unknown at which stage. This investigation therefore has only been made public via media interviews with the claimant.⁵⁴

5. Recommendation (e) – Studies

(e) *Conduct studies into this issue in order to better understand and deal with it.*

Already in 2014, at a meeting at the Ministry of Health, Co-Rapporteur Vincent Guillot was **promised that the Ministry would carry out a study to obtain figures on intersex.** Until today, this was **by no means done.**

In December 2016, several future members of GISS had asked the **National Consultative Ethics Committee** (“*Comité consultatif national d’éthique*”) to conduct an investigation. In January 2017 the Committee **refused to take up the matter.**

Further, a funding request by GISS for an **intersex research project**, in partnership with research institutes combining life sciences, sociology and law, **was rejected.**

(3 in Germany, 1 in the USA) were either about surgery of adults, or initiated by foster parents.

51 An anonymised version of this decision is available from the Rapporteurs on request.

52 B. Moron-Puech, « Rejet de l’action d’une personne intersexuée pour violences mutilantes. Une nouvelle « mutilation juridique » par la Cour de cassation ? », La Revue des Juristes de Sciences Po, juin 2018, p. 71-104, <https://sexandlaw.hypotheses.org/412/bmp-commentaire-6-mars-2018>

53 Vincent Vantighem (26.11.2017), Une personne intersexe dépose plainte contre les médecins qui l’ont opérée pour «devenir» homme, 20minutes, <https://www.20minutes.fr/societe/2172971-20171126-personne-intersexe-depose-plainte-contre-medecins-operee-devenir-homme>

54 Ibid., and: Iris Peron (27.11.2017), "J'ai été mutilé dans un souci de normalisation", témoigne une personne intersexe, l’express, https://www.lexpress.fr/actualite/societe/justice/j-ai-ete-mutile-dans-un-souci-de-normalisation-temoigne-une-personne-intersexe_1964084.html ;

Allodocteurs.fr, Intersexualité : une personne dépose plainte pour mutilation, https://www.francetvinfo.fr/sante/affaires/intersexualite-une-personne-depose-plainte-pour-mutilation_2753545.html ;

Interview in segment “« Intersexualité : première plainte pour mutilation », Le magazine de la Santé, TV France 5, 11.05.2018, see <https://sexandlaw.hypotheses.org/388>

D. Conclusion: France is failing its obligations towards intersex people under CAT and CAT/C/FRA/CO/7, paras 34-35

As substantiated above, **France is categorically failing to meet its obligations** towards intersex people **resulting from the Concluding observations of this Committee** (paras 34-35).

Regarding IGM practices, France is unchangedly in breach of its obligation to take **effective legislative, administrative, judicial or other measures** to prevent acts of torture (Art. 2 CAT) or other forms of cruel, inhuman or degrading treatment (Art. 16 CAT, General Comment 2).

Victims of IGM practices unchangedly encounter **severe obstacles** in the pursuit of their right to an **impartial investigation** (Arts. 12, 13 CAT), and to **redress** and fair and adequate compensation, including the means for as **full rehabilitation** as possible (Art. 14 CAT, General Comment 3).

Also France efforts on **education and information regarding the prohibition against torture in the training of medical personnel** remain grossly insufficient with respect to the treatment of intersex people (Art. 10 CAT).

D. Suggested Questions for the LOIPR

The Rapporteurs respectfully suggest that in the LOIPR the Committee asks the French state party the following questions with respect to the treatment of intersex children:

Intersex Genital Mutilation (arts. 2, 12, 14, 16)

- **How many involuntary, non-urgent, irreversible surgical and other procedures have been undertaken on intersex children before an age at which they are able to provide informed consent? Please provide detailed statistics on sterilising, feminising, masculinising procedures and imposition of hormones, including prenatal procedures.**
- **What measures does the State party plan to implement to stop this practice? And what measures to guarantee free psychosocial support for all persons concerned and their parents?**
- **Please indicate which criminal or civil remedies are available for intersex people who have undergone involuntary sterilisation or unnecessary and irreversible medical or surgical treatment when they were children, and whether these remedies are subject to any statute of limitations.**