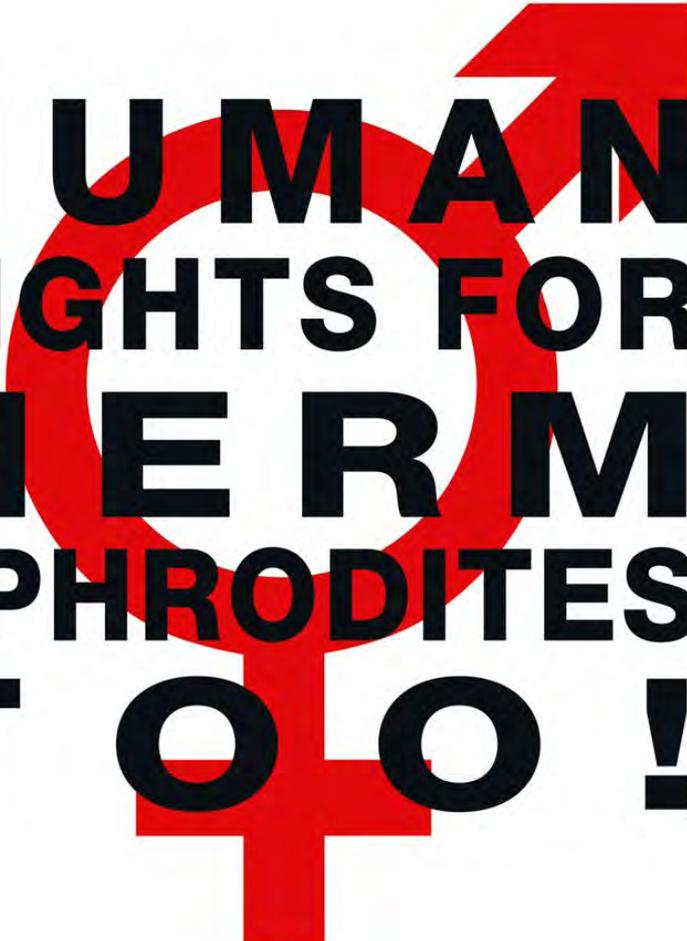


Intersex Genital Mutilations

Human Rights Violations Of Children With Variations Of Reproductive Anatomy



**HUMAN
RIGHTS FOR
HERM
APHRODITES
TOO !**

NGO Report (for Session)
to the 6th Report of Germany
on the Convention against Torture (CAT)

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January 2019

This NGO Report online:

<http://intersex.shadowreport.org/public/2019-CAT-Germany-NGO-Intersex-StopIGM.pdf>



Executive Summary

All typical forms of IGM practices are still widespread in Germany today, facilitated and paid for by the State party via the public health care system, with available statistics indicating about 1700 involuntary, non-urgent interventions practiced annually.

Germany is thus in breach of its obligations under CAT to (a) take effective legislative, administrative, judicial or other measures to **prevent involuntary, non-urgent surgery and other medical treatment on intersex persons** without the effective, informed consent of those concerned, causing severe mental and physical pain and suffering, and (b) **to ensure impartial investigation, access to redress**, and the right to fair and adequate **compensation and rehabilitation for victims** (arts. 2, 12, 14 and 16, General Comments 2 and 3). Germany is also in breach of **this Committee's 2011 Concluding Observations on intersex**.

This Committee has repeatedly recognised IGM practices to constitute ill-treatment, and called for **legislation** to (a) end the practice, (b) ensure redress and compensation, and (c) to provide access to free counselling (CAT/C/DEU/CO/5, para 20; CAT/C/CHE/CO/7, para 20; CAT/C/AUT/CO/6, paras 44-45; CAT/C/DNK/CO/6-7, paras 42-43; CAT/C/CHN-HKG/CO/4-5, paras 28-29; CAT/C/FRA/CO/7, paras 32-33; CAT/C/NLD/CO/7, paras 52-53).

In addition, CEDAW has already **considered IGM in Germany as a harmful practice** (CEDAW/C/DEU/CO/7-8, paras 23-24) and **CRPD as a violation of the integrity** (CRPD/C/DEU/CO/1, paras 37-38). Also **CRC, CCPR, SR Torture, SR Violence against Women, SRSG Violence against Children, UNHCHR, the Council of Europe (COE), the Inter-American Commission on Human Rights (IACHR), the African Commission on Human and Peoples' Rights (ACHPR) and the World Health Organisation (WHO)** recognise IGM practices as a serious violation of non-derogable human rights, calling for **legislative remedy and access to redress and justice**.

Intersex people are born with **Variations of Sex Anatomy**, including atypical genitals, atypical sex hormone producing organs, atypical response to sex hormones, atypical genetic make-up, atypical secondary sex markers. While intersex people may face several problems, in the "developed world" the most pressing are the ongoing **Intersex Genital Mutilations**, which present a distinct and unique issue constituting significant human rights violations.

IGM Practices include non-consensual, medically unnecessary, irreversible, cosmetic genital surgeries, and/or other harmful medical treatments that would not be considered for "normal" children, without evidence of benefit for the children concerned, but justified by societal and cultural norms and beliefs. **Typical forms** of IGM include "masculinising" and "feminising", "corrective" genital surgery, sterilising procedures, imposition of hormones, forced genital exams, vaginal dilations, medical display, human experimentation and denial of needed health care.

IGM Practices cause known **lifelong severe physical and mental pain and suffering**, including loss or impairment of sexual sensation, painful scarring, painful intercourse, incontinence, urethral strictures, impairment or loss of reproductive capabilities, lifelong dependency of artificial hormones, significantly elevated rates of self-harming behaviour and suicidal tendencies, lifelong mental suffering and trauma, increased sexual anxieties, less sexual activity, dissatisfaction with functional and aesthetic results.

This **Thematic NGO Report** was compiled by the international intersex NGO **Zwischengeschlecht.org / StopIGM.org**. It contains **Suggested Recommendations (p. 26)**.

**NGO Report (for Session)
to the 6th Report of Germany
on the Convention against Torture (CAT)**

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A. Introduction

1. Intersex, IGM and Human Rights in Germany

Germany has been reviewed by CAT (2011), CRPD (2015) and CEDAW (2017), with all Committees **recognising** IGM in Germany as constituting **cruel, inhuman or degrading treatment or torture**, a **violation of integrity** and a **harmful practice** respectively.

Allover the World, **UN treaty bodies including CAT** regularly denouncing IGM as a **serious violation of non-derogable human rights**.^{1 2}

Nonetheless, **Germany continues to deny** the serious nature of the violations constituted by IGM practices, and **refuses to undertake effective measures**, including legislation, to protect intersex children from the daily mutilations. This NGO Report demonstrates that the current **harmful medical practice on intersex persons in Germany** – advocated, facilitated and **paid for by the State party** –, as well as **Germany's refusal to answer the LOIPR questions** on access to justice, redress and compensation, constitute **serious breaches** of Germany's obligations under the Convention, and also of the **2011 CAT Concluding Observations for Germany**.

2. About the Rapporteurs

This NGO report has been prepared by the international intersex NGO *StopIGM.org / Zwischengeschlecht.org*:

- **StopIGM.org / Zwischengeschlecht.org** is an international intersex human rights NGO with a **German constituency** 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!*"³ According to its charter,⁴ StopIGM.org works to support persons concerned seeking redress and justice and regularly reports to UN treaty bodies, often in collaboration with local intersex advocates and NGOs.⁵

StopIGM.org has been active in Germany since 2007, supporting intersex persons suing IGM perpetrators, publicly confronting individual perpetrators and hospitals, documenting the ongoing practice, raising awareness in the media, collaborating with members of parliament on parliamentary questions on the federal and on the Länder level, and testifying before the German National Ethics Council, calling for effective remedies to end the practice, and previously reported on IGM in Germany to CCPR, CRPD and CEDAW.

In personal capacity co-founder Daniela Truffer is also a member of the German intersex self-help group XY-Women, serving as a first contactor for 7 years, and of the German Association of Intersex People, serving as chair when it first submitted a thematic report to a UN Treaty body, leading to the first ever recommendations on intersex in 2009.

1 Currently there are **38 UN Treaty body Concluding Observations** explicitly condemning IGM practices as a **serious violation of non-derogable human rights**, see:

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

2 **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>

3 <http://Zwischengeschlecht.org/> English homepage: <http://stop.genitalmutilation.org>

4 <http://zwischen-geschlecht.org/post/Statuten>

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

3. Methodology

This thematic NGO report is an update to the **2011 CAT Germany NGO Report**⁶ by Intersexuelle Menschen e.V. / XY-Frauen and Humboldt Law Clinic: Human Rights. It contains updated information from the **2015 CRPD Germany NGO Report**,⁷ the **2017 CEDAW Germany NGO Report**,⁸ the **2018 CCPR Germany NGO Report (for LOIPR)**⁹ and the **2018 CRPD Germany NGO Report (for LOIPR)**¹⁰ by Zwischengeschlecht.org / StopIGM.org.

6 http://intersex.shadowreport.org/public/Association_of_Intersexed_People-Shadow_Report_CAT_2011.pdf

7 http://intersex.shadowreport.org/public/2015-CRPD-LoI-Germany_NGO-Report_Zwischengeschlecht_Intersex-IGM.pdf

8 <http://intersex.shadowreport.org/public/2017-CEDAW-Germany-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

9 <http://intersex.shadowreport.org/public/2018-CCPR-LOIPR-Germany-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

10 <http://intersex.shadowreport.org/public/2018-CRPD-LOIPR-Germany-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

B. Precedents

1. 2011 Concluding Observations on Intersex (CAT/C/DEU/CO/5, para 20)

Intersex people

20. *The Committee takes note of the information received during the dialogue that the Ethical Council has undertaken to review the reported practices of routine surgical alterations in children born with sexual organs that are not readily categorized as male or female, also called intersex persons, with a view to evaluating and possibly changing current practice. However, the Committee remains concerned at cases where gonads have been removed and cosmetic surgeries on reproductive organs have been performed that entail lifelong hormonal medication, without effective, informed consent of the concerned individuals or their legal guardians, where neither investigation, nor measures of redress have been introduced. The Committee remains further concerned at the lack of legal provisions providing redress and compensation in such cases (arts. 2, 10, 12, 14 and 16).*

The Committee recommends that the State party:

(a) Ensure the effective application of legal and medical standards following the best practices of granting informed consent to medical and surgical treatment of intersex people, including full information, orally and in writing, on the suggested treatment, its justification and alternatives;

(b) Undertake investigation of incidents of surgical and other medical treatment of intersex people without effective consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation;

(c) Educate and train medical and psychological professionals on the range of sexual, and related biological and physical, diversity; and

(d) Properly inform patients and their parents of the consequences of unnecessary surgical and other medical interventions for intersex people.

2. 2013 List Of Issues Prior To Reporting (LOIPR) (CAT/C/DEU/QPR/6, para 40)

Article 16

[...]

40. *In the light of the previous concluding observations (para. 20) please provide updates since November 2011 on any steps taken by the State party to ensure that the current legal standards and medical practices applied with regard to medical and surgical treatment of intersex persons at the Federal and Länder levels guarantee that prior information about the suggested treatment, as well as the consequences of unnecessary interventions is given to the individuals concerned orally and in writing and their legal guardians, when appropriate. Please also explain whether the current legal standards and medical practices require mandatory prior consent of the patient and their legal guardians, when appropriate, before the treatment is provided. [68] Please inform the Committee about any training carried out among medical professionals on the range of sexual, biological and physical diversity and the respect of the rights of intersex persons, including their right to free, prior and informed consent to any treatment. Please provide updated data on the number of complaints of incidents of medical treatment on intersex persons without their effective consent and information on investigations, prosecutions, convictions and penalties in relation to such complaints. Please also provide updates on the legal means of redress provided to intersex people who have been victims of non-consensual surgical and other medical treatment, including legal, medical and psychological aid, and adequate compensation.*

[68] *A/HRC/WG.6/16/DEU/3, para. 50.*

3. 2017 State Party Report (CAT/C/DEU/6, paras 211-225)

Reply to the issues raised in paragraph 40

211. *Prior to performing a medical measure such as, for example, surgical or other medical interventions, a physician must obtain the consent of the patient or, where the patient is unable to grant such consent, the physician must obtain the consent of the patient's legal representative. For this purpose, the physician must explain to the patient, respectively his or her legal representative, the entirety of all circumstances relevant for the patient's consent. They specifically include the nature, scope, implementation of the measure, the consequences to be expected and the risks that it entails, as well as its necessity, its urgency, its suitability, and its prospects of success with regard to the diagnosis or the therapy. This explanation must also address alternatives to the measure proposed if several customary methods exist that would serve the same medical purpose, and that would carry significantly divergent encumbrances, risks, or chances of recovery. The consent and the explanations are governed specifically by sections 630a et seqq. of the Civil Code (BGB).*

212. *The Federal Government has made it its objective to put an end to any existing discrimination against people based on their sexual identity, regardless of the societal sphere in which this may occur, and to evaluate the improvements and, as the case may be, further expand them that have resulted for intersex persons from changes to the laws relating to the civil status of persons.*

213. *The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) has taken on primary responsibility for coordinating these topics. In 2014, a general policy department was instituted on "Same-Sex Lifestyles, Gender Identity" (Gleichgeschlechtliche Lebensweisen, Geschlechtsidentität), thus giving an institutional backbone to this issue. In September of 2014, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth launched an inter-ministerial working group on "Intersexuality and Transsexuality" (Inter- und Transsexualität). The working group has set itself the goal of addressing the many and various questions and issues by facilitating the exchange of views with expert staff and interest groups, discussing suggestions for any legislative solutions and by publishing a concluding document.*

214. *The working group convenes regularly for discussions; in some instances, experts are called in. Current issues and debates are integrated into the work process, for example by the EU, the European Council, parliamentary enquiries or non-governmental organisations. These work tasks are processed in parallel by the competent ministries in the context of the usual inter-ministerial cooperation.*

215. *It is planned to issue a concluding document in the summer of 2017.*

216. *In light of the function of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth as a department responsible for social policy, it performs qualitative accompanying research, participatory exchanges among experts, and public relations work in parallel with the work done by the working group.*

217. *Intersexuality (in the sense of a difference (disorder) of sexual development) is no longer understood, as such, as a disorder/illness, and instead regarded as a variation of gender that is to be recognised; this has been stated both the 2015 statement of position by the German Medical Association (Bundesärztekammer) entitled "Care for children, youth, and adults with variants,*

respectively disorders, of sex development” (Versorgung von Kindern, Jugendlichen and Erwachsenen mit Varianten bzw. Störungen der Geschlechtsentwicklung (Disorders of Sex Development, DSD)) and the guidelines adopted in July of 2016 by the Association of the Scientific Medical Societies in Germany (Arbeitsgemeinschaft der Wissenschaftlichen Medizinischen Fachgesellschaften) “Variants of sex development” (Varianten der Geschlechtsentwicklung).

218. *The German Ethics Council has suggested, in its statement on the topic of intersexuality, that the instances be reviewed in which the German legal order is premised on the category of gender.*

219. *These were among the questions that the German Institute for Human Rights (Deutsches Institut für Menschenrechte) addressed in its opinion, prepared on behalf of the Federal Family Ministry, on “Gender in the Law: Status Quo and Development of Statutory Models for the Recognition and Protection of Gender Identity (Geschlecht im Recht: Status Quo & Entwicklung von Regelungsmodellen zur Anerkennung und zum Schutz von Geschlechtsidentität).”*

220. *A public debate among experts took place on 16 February 2017 regarding this opinion, along with another one commissioned by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The exchange of views among specialists and the opinion served to obtain an indication of where amendments to the law may be required, which will then be further discussed in the inter-ministerial working group on “Intersexuality and Transsexuality.”*

221. *The guideline of the Association of the Scientific Medical Societies in Germany cited above and the statement of position from the German Medical Association recommend to physicians that they perform surgical interventions on children unable to grant their consent only in those cases in which such measures are indicated in medical terms and serve to avert subsequent damage from the child.*

222. *The inter-ministerial working group on “Intersexuality and Transsexuality” tends, based on a current analysis of the factual and legal situation, to advocate a solution providing for mandatory consultancy, the details and structure of which still need to be discussed. The legal opinion commissioned by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth on “Diversity of Gender in the Law” (Geschlechtervielfalt im Recht) likewise sets out suggestions in this regard and is retrievable online here:*

<https://www.bmfsfj.de/bmfsfj/service/publikationen/geschlechtervielfalt-im-recht/114072>

223. *In this context, the recommendations made by the Association of the Scientific Medical Societies in Germany in its “Variants of sex development” publication also should be taken into account. In cases in which an intervention seems absolutely mandated for medical reasons, the advice should go in the direction of performing the intervention such that the child’s later options of making a choice and taking a decision regarding her own gender manifestation and gender identity are restricted as little as possible.*

224. *Moreover, targeted public relations work and information campaigns should raise awareness, also in the healthcare sector, of the fact that, taken in and of itself, a physical variation of sex development as a rule will not require any treatment and that the right to develop one’s own gender identity should be respected.*

225. *The final recommendations by the inter-ministerial working group on “Intersexuality and Transsexuality” will be set out in the planned concluding document.*

C. Non-derogable Protections denied: The 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, with often **serious legal consequences**, notably if intersex is falsely labelled as being the same as or a subset of LGBT or SOGI, e.g. if intersex and/or intersex status are **misrepresented as a sexual orientation** (like gay or lesbian), and/or as a **gender identity**, as a subset of **transgender**, as the same as **transsexuality**.

The underlying reasons for such harmful misconceptions include **lack of awareness**, third party groups **instrumentalising intersex as a means to an end**^{11 12} 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,¹³ 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.¹⁴

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*”,¹⁵ “*a special provision on sexual orientation and gender identity*”, “*civil registry*” and “*sexual reassignment surgery*”¹⁶, transgender guidelines¹⁷ or “*Gender Identity*”^{18 19} when asked about IGM by e.g. Treaty bodies.

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),

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

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

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

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

15 CRC73 New Zealand, <http://stop.genitalmutilation.org/post/NZ-to-be-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-the-Child>

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

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

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

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

IGM survivors as “*transsexual children*”, and intersex NGOs as “*a group of lesbians, gays, bisexuals, transgender and intersex victims of discrimination*”,²⁰ and again IGM survivors as “*transgender children*”,²¹ “*transsexual children who underwent difficult treatments and surgeries*”, and IGM as a form of “*discrimination against transgender and intersex children*”²² and as “*sex assignment surgery*” while referring to “*access to gender reassignment-related treatments*”.²³

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 or public representation, if any) of much needed resources.²⁴

On a **legislative level**, the wilful misrepresentation of intersex as a LGBT or gender issue inevitably perpetuates the **denial of non-derogable right to intersex children**, including **protection from inhuman treatment**, genital mutilation or involuntary sterilising procedures, and the **right to justice, redress and compensation** of those submitted to such harmful medical practices.

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**^{25 26 27} – 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**.²⁸

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

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

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

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

24 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>

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

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

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

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

D. IGM in Germany: State-sponsored and pervasive, Gov fails to act

1. Overview: IGM practices in Germany: Pervasive and unchecked (art. 17)

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), **same as in the neighbouring states of Switzerland** (see CAT/C/CHE/CO/7, para 20; CCPR/C/CHE/CO/4, paras 24-25; CRC/C/CHE/CO/2-4, paras 42-43; CEDAW/C/CHE/CO/4-5, paras 38-39), **France** (see 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), **Austria** (see CAT/C/AUT/CO/6, paras 44-45), **and in many more State parties,**²⁹ there are

- **no effective 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**
- **no measures** in place to ensure **systematic data collection and monitoring** of IGM
- **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 (see also below p. 15-17)

To this day, the **German government** undeviatingly **refuses** to “*take effective legislative, administrative, judicial or other measures*” to protect intersex children, but instead since 1996³⁰ continues with a **perpetual cycle of denial and endless discussions, roundtables, empty promises, and yet more “careful examination” without any consequences ever.**

What’s worse, this continues **after the State party has already been reprimanded** by **CAT in 2011**, by **CRPD in 2015** and by **CEDAW in 2017** for IGM practices, with all Committees calling for **legislative measures** including to ensure access to **redress**, and to provide **adequate support.**

So far, as vaguely admitted by the “Inter-Ministerial Working Group (IMAG)” (“*the total number of procedures seems not to have changed significantly*”),³¹ in Germany all forms of **IGM practices remain widespread and ongoing**, persistently **advocated, prescribed and perpetrated** by state funded University and Regional Children’s Clinics, and **paid for** by the German Public Health Insurances, as corroborated by two 2016 studies using **partial data from the “Diagnosis Related Groups (DRG)”** of intersex surgeries in German hospitals financed by the Public Health System, reporting **on average 1,700 IGM procedures every year:**

Study 1: Ulrike Klöppel: Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter. ZtG Texte 42: https://www.gender.hu-berlin.de/de/publikationen/gender-bulletins/bulletin-texte/texte-42/kloepfel-2016_zur-aktualitaet-kosmetischer-genitaloperationen

Study 2: Anike Krämer (M.A.), Prof. Dr. Katja Sabisch, Dr. med. Jörg Woweries: Varianten der Geschlechtsentwicklung – die Vielfalt der Natur. Kinder- und Jugendarzt. 47. Jg. (2016) Nr. 5/16: <http://www.vlsp.de/files/pdf/kraemer2016.pdf>

(For an overview of the 2 studies, and available data on the on average 1,700 IGM procedures annually, see Annexe 1, p. 27-31.)

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

30 See 2016 CRPD Germany NGO Report, p. 18-20, <http://intersex.shadowreport.org/public/2015-CRPD-LoI-Germany-NGO-Report-Zwischengeschlecht-Intersex-IGM.pdf>

31 BMFSFJ (ed.): „Situation von trans- und intersexuellen Menschen im Fokus“. Sachstandsinformation, p. 18: <https://www.bmfsfj.de/blob/112092/46d6be33eb8f2b5d2ee81488da03029c/situation-von-tans--und-intersexuellen-menschen-im-fokus-data.pdf>

Both studies, which were commissioned by the Federal Government, **provide NO disaggregated regional data** on procedures in individual Länder or clinics, citing “*privacy concerns*”.

After 2014, no more data at all was published by the Federal Government so far – despite that **since at least 1996**³² the German government has been regularly called upon to **collect and disclose statistics** on IGM practices. And CAT, CRPD and CEDAW have urged Germany to “*investigate cases*” and “[s]ystematically collect disaggregated data”.

Even worse, the **State Government of Bavaria**³³ **censored the all data** in the public hansard of an answer to a relevant parliamentary question on IGM statistics, claiming “*data on above mentioned surgical interventions are business and trade secrets of the [mostly state controlled] clinics,*” and therefore “*secret*” and “*not allowed to be published according to art. 30 VwVfG,*” further referring to “*data protection.*”

At the same time, access to **adequate psychosocial counselling and peer support remains sorely lacking.**

2. IGM practices are a serious violation of non-derogable human rights, NOT “medical treatment” or “carrying out sex reassignment surgery hastily”

Germany is a particularly **cautionary example** of a **State party trying to deflect** from the **serious violations of non-derogable human rights** constituted by involuntary, non-urgent genital surgery and other treatment on intersex children including partial clitoris amputations, sterilising procedures, imposition of hormones, “blind” prenatal “therapy” and selective abortion, by constantly **misrepresenting intersex and IGM as sexual orientation, gender identity or “health” issues** in an attempt to **deflect from criticism**, for example by persistently **trivialising IGM as “medical treatment” and/or “carrying out sex reassignment surgery hastily”**³⁴ (i.e. putting involuntary surgery on intersex children on a level with voluntary surgery for trans people).

Germany’s constant denial of its non-derogable obligations to protect intersex children from cruel, inhuman or degrading treatment is also **evidenced by the State party’s (non-)answers to the LOIPR**: While the State party on the one hand conveniently **ignored all the questions** concerning provisions to guarantee **access to justice, redress and compensation** to intersex persons, on the other hand the State report **artificially inflates and unduly focuses on topics irrelevant to ill-treatment** of intersex children, page after page expanding on e.g. “*discrimination against people based on their sexual identity*” and “*laws relating to the civil status of persons*” (para 212), “*Same-Sex Lifestyles, Gender Identity*” (para 213), laws “*premised on the category of gender*” (para 218), “*Gender in the Law*” and “*Recognition and Protection of Gender Identity*” (para 219), “*gender manifestation and gender identity*” (para 223), “*right to develop one’s own gender identity*” (para 224).

32 2015 CRPD NGO Report for Germany (p. 17), <http://intersex.shadowreport.org/public/2015-CRPD-LoI-Germany-NGO-Report-Zwischengeschlecht-Intersex-IGM.pdf>

33 17/3884 [leaked uncensored version of answer to original question no. 3, p. 1 – in the official answer, the relevant original question no. 3 was secretly omitted, see p. 2] http://blog.zwischengeschlecht.info/public/Bayern_2014_Anfrage_17-3884_Intersex_IGM_Zensur_web.pdf

34 CEDAW66 Germany, section on intersex in the 7th and 8th Periodic State report, paras 200-205 (on Recommendation 62)

What's worse, the State report even **counterfactually describes intersex as “a variation of gender”** instead of correctly as a physical variation of the reproductive organs (para 217), and misrepresents **involuntary, non-urgent and harmful interventions as “performing a medical measure”** instead of correctly as serious human rights violations (para 211).

(See also “Non-derogable protections denied”, particularly “Intersex is NOT THE SAME as LGBT”, p. 12-13, and “Misrepresenting Genital Mutilation as ‘Health Care’”, p. 13.)

Last but not least, the State report evidently betrays **Germany's undue preference of endless “discussions” and “debates”** (para 214) without any tangible consequences, as well as “exchanges among experts” (para 216), “public debate among experts”, “exchange of views among specialists”, “further discuss[ions]” (para 220), **over effective measures to prevent and remedy** the ongoing serious human rights violations **perpetrated by the State party itself** on intersex children.

(See also “Conclusion: 20 Years of Endless Talk, But No Action”, p. 25.)

E. Unanswered Questions and recent Developments not mentioned in the Replies to the LOIPR

1. Unanswered Questions: Access to Justice, Redress, Compensation

First it should be duly noted that the **State party's reply** to the Committee's question about ill-treatment of intersex persons (para 40) **conveniently ignores all questions about access to justice, redress and compensation:**

Please provide updated data on the number of complaints of incidents of medical treatment on intersex persons without their effective consent and information on investigations, prosecutions, convictions and penalties in relation to such complaints. Please also provide updates on the legal means of redress provided to intersex people who have been victims of non-consensual surgical and other medical treatment, including legal, medical and psychological aid, and adequate compensation.

Considering **Germany's absolutely dismal record** in this regard (see Annexe 1), this is hardly a coincidence, but rather symptomatic of the **State party's continued denial** that involuntary non-urgent interventions on intersex children resulting in lifelong, severe physical and mental pain and suffering constitute not "beneficial health care", but a **serious violation of non-derogable human rights**. However, in this regard the **State party fails to take action**.

2. Relevant Developments not mentioned in the Replies to the LOIPR

a) 2012: German Ethics Council proposes Compensation Fund for IGM Victims

In 2012 the **German Ethics Council** recommended to **establish a compensation fund**.³⁵ And in 2017 **CEDAW** explicitly obliged Germany (CEDAW/C/DEU/CO/7-8, paras 23-24) to "*consider the proposal of the German Ethics Council to establish a State compensation fund*".

b) 2014: Minister's Conference proposes "Legal Ban" of IGM

In 2014, the **24th Conference of Ministers for Women's Issues and Equality (GFMK)** explicitly called for a "*legal ban of medically unnecessary surgical and pharmacological [...] interventions on intersex minors,*" explicitly referring to **the need of intersex children for similar protection against sterilisation (§ 1631c BGB) and female genital mutilation (§ 226a StGB)** that other children and girls already enjoy.³⁶

c) 2015: CRPD seconds CAT Concluding Observations on Intersex Children

CRPD explicitly seconded this Committee's recommendations to Germany in its own 2015 Concluding Observations (CRPD/C/DEU/CO/1, paras 37-38), under art. 17 "Protecting the integrity of the person", voicing concerns about "*(d) the lack of implementation of the 2011 recommendations of the Committee against Torture (see CAT/C/DEU/CO/5, para. 20) regarding upholding the bodily integrity of intersex children*" and urging Germany to "*take the measures, including of a legislative nature, necessary to [...] (d) Implement all the recommendations of the Committee against Torture (ibid.) relevant to intersex children.*"

35 Stellungnahme „Intersexualität“, 14. Februar 2012 (BT – Drs. 17/9088), S. 176

36 at 52-54

http://www.gleichstellungsministerkonferenz.de/documents/2014_10_13_Beschluesse_GESAMT_Extern.pdf

d) 2017: German University Hospitals involved in International IGM Networks

In 2017, the “European Reference Network” was launched with the goal to ensure better treatment for patients with rare diseases within the European Union.³⁷ Unfortunately, **2 of the newly created “ERNs” also specialise in the proliferation and practice of IGM**, namely the **“Network Urogenital Diseases” a.k.a. “eUROGEN”** and the **“Network on Endocrine Conditions” a.k.a. “Endo-ERN”**.³⁸ Like with earlier international networks led by IGM perpetrators, e.g. “I-DSD”³⁹ and “DSDnet”,⁴⁰ German Hospitals are again involved.⁴¹

German **“eUROGEN” members specialising in IGM practices** (e.g. *“Posterior hypospadias”, “Urorectal-anorectal malformations”, “Non-syndromic urogenital tract malformation”, “Complex genital reconstructions (DSDs)”*) include the **Charité University Hospital Berlin**, the **Munich University Hospital**, the **Bremen-Mitte University Hospital**, the **Leipzig University Hospital**, and the **Hamburg-Eppendorf University Hospital** (all of them well-known IGM practitioners).⁴²

German **“Endo-ERN” members** participating in the IGM-related Main Thematic Group **“MTG7: Sex Development & Maturation”** include the **Charité University Hospital Berlin**, the **Schleswig-Holstein University Hospital Lübeck**, the **Munich University Hospital**, and the **Münster University Hospital** (again all of them well-known IGM practitioners).⁴³

e) 2017: CEDAW obliges Germany to “explicitly prohibit” IGM, pay Compensation

CEDAW explicitly obliged Germany (CEDAW/C/DEU/CO/7-8, paras 23-24) to **“Adopt clear legislative provisions explicitly prohibiting the performance of unnecessary surgical or other medical treatment on intersex children until they reach an age at which they can provide their free, prior and informed consent”**, and to **“consider the proposal of the German Ethics Council to establish a State compensation fund”**.

f) 2017: Inter-Ministerial Working Group on Intersexuality and Transsexuality states IGM “may constitute Bodily Injury”, suggests “clarifying Prohibition”

End of 2017, the “Inter-Ministerial Working Group on Intersexuality and Transsexuality (IMAG)” published its final report.⁴⁴ Therein, the last section of Chapter V. **“Examination of necessary amendments to the law”** discusses **“Protection against sex-reassigning [sic] surgery in children with variations in physical sex characteristics”**.

37 https://ec.europa.eu/health/sites/health/files/ern/docs/2017_brochure_en.pdf

38 See <http://stop.genitalmutilation.org/post/eUROGEN-EU-funded-Intersex-Genital-Mutilators>

39 See Open Letter to “I-DSD 2017”, http://stop.genitalmutilation.org/public/Open_Letter_I-DSD_Copenhagen_2017.pdf

40 See <http://stop.genitalmutilation.org/post/DSDnet-Intersex-Genital-Mutilators-European-Union>

41 The Open Letter to “I-DSD 2017” lists 18 German University Clinics involved in current international IGM projects, see p. 1-2, http://stop.genitalmutilation.org/public/Open_Letter_I-DSD_Copenhagen_2017.pdf

42 <http://eurogen-ern.eu/healthcare-providers/our-members/>

43 <https://endo-ern.eu/about/reference-centers/>

44 BMFSFJ (2018), Zusammenfassung. Forschungsergebnisse und Erkenntnisse des Bundesministeriums für Familie, Senioren, Frauen und Jugend aus der Begleitarbeit zu der Interministeriellen Arbeitsgruppe “Inter- und Transsexualität” (IMAG), p. 22, 23
<https://www.bmfsfj.de/blob/120644/e2068b3d513b7f772760becf8bd4c70a/imag-band-12-zusammenfassung-der-forschungsergebnisse-data.pdf>

It states, involuntary non-urgent interventions on intersex children

“may constitute bodily injury. Therefore, the United Nations, in particular the CAT and CEDAW Conventions, are calling for an additional, explicit and unequivocal prohibition of unnecessary surgical or other medical treatment of the gonads and genitals of children.” (p. 22)

It further refers to **studies** including on statistics (see Annexe 2, p. 32-35) and **findings** of significant regret of early surgery in adult patients, then concludes:

“Against the background of these findings, the question of a clarifying prohibition of surgery in the German Civil Code (BGB) as well as the introduction of mandatory counselling for parents arises.” (p. 23)

g) 2018: Coalition Agreement promises Legal Prohibition of IGM

The **Coalition Agreement 2018-21** of the **current Government** explicitly promises: *“We will make it clear by law that [...] medical interventions on [intersex] children are only permissible in cases that cannot be postponed and in order to avert danger to life.”*⁴⁵

h) 2018: CCPR raises “non-emergency” Surgery, “Obstacles in Access to Justice”

In its LOIPR for Germany (CCPR/C/DEU/QPR/7, para 13), the HRCttee raises *“non-emergency, invasive and irreversible surgical or other medical treatment carried out on infants and children with variations of sex characteristics (intersex), including sterilizing, feminizing, and masculinizing procedures, without fully informed, prior and free consent”*, and asks about *“plans to ban such procedures unless they are an absolute medical necessity or are consented to by sufficiently mature intersex individuals themselves”* and *“measures taken to address obstacles in access to justice and redress for individuals who were subjected to such surgical or other interventions as children, including statutes of limitations for filing claims.”*

i) 2018: CESC64: Germany promises “Legislation” to prohibit IGM

During the interactive dialogue with Germany, CESC64 raised concerns about *“unnecessary operations [which] continue[...] to be performed on intersex children”*. In its responses, the delegation explained:

*“Data on surgeries performed on intersex children were not being collected, but the Government had agreed that medical intervention could only be carried out if there was a risk to the child’s life or health, and would bring forward such legislation.”*⁴⁶

In addition, in its **Concluding Observations** to Germany (E/C.12/DEU/CO/6, para 24-25) CESC64 included:

“The Committee recommends that the State party take necessary measures to prohibit medically unnecessary gender confirmation surgery on intersex infants”

45 CDU, CSU und SPD (2018): Coalition Agreement for 19th Legislative Term, p. 21, lines 797-799.

https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf?file=1

46 UN Press release, 25.09.2018, Committee on Economic, Social and Cultural Rights reviews report of Germany, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23633&LangID=E>

j) 2018: Minister of Justice promises “legal Provision” to “end this Practice”

On 16.10.2018, the Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und für Verbraucherschutz BMJV) convened an expert meeting on “*Protection of intersexual children from sex-reassigning medical measures*”. In an accompanying BMJV Press release,⁴⁷ the Federal Minister of Justice and Consumer Protection, Katarina Barley, opined:

*“Gender-reassigning surgeries on intersexual children which are carried out without medical necessity often lead to **lifelong suffering for those affected**. We want to **put an end to this practice**, which is what I personally advocated in the coalition negotiations. In order to protect these children, we need a **clarifying legal provision as soon as possible.**”*

Further, the Press release reiterated the goal of the expert meeting would be “*to be able to submit a legislative draft quickly*”.

k) 2018: Social Court: Involuntary, non-urgent Clitoridectomy = “State of the Art” legal medical Intervention “serv[ing] the Well-Being of the Patient”

In an ongoing lawsuit currently in its 11th year concerning compensation according to the **Victim’s Compensation Law (OEG)**, and in which the claimant explicitly referred to this Committee’s 2011 Concluding Observations to Germany, the **Social Court Hamburg** claimed in a verdict dated **19.12.2018**, that the non-consensual **full clitoridectomy** and involuntary **medical experimentation with “Androcur”** on an intersex child would constitute “*state of the art*” **legal medical interventions “serv[ing] the well-being of the patient”**, and that – contrary to CAT/C/DEU/CO/5, para 20; CRPD/C/DEU/CO/1, paras 37-38; CEDAW/C/DEU/CO/7-8, paras 23-24; CCPR/C/DEU/QPR/7, para 13 – “[a]lso a human experiment and torture [or CIDT] is not to be assumed” (see below Annexe 1, Case 4, p. 30-31).

47 https://www.bmjbv.de/SharedDocs/Artikel/DE/2018/101618_Fachtag_intersexuelle_kinder.html

F. Germany ignores Concluding Observations on Intersex

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

(a) *Ensure the effective application of legal and medical standards following the best practices of granting informed consent to medical and surgical treatment of intersex people, including full information, orally and in writing, on the suggested treatment, its justification and alternatives;*

On the side of “*medical standards*”, in 2015 federal self-regulation body German Medical Association (GMA) (“*Bundesärztekammer (BÄK)*”) issued a “*Statement on DSD*”⁴⁸, and in 2016 the Association of the Scientific Medical Societies in Germany (AWMF) (“*Arbeitsgemeinschaft der Wissenschaftlichen Medizinischen Fachgesellschaften*”) coordinating the national programme of medical guidelines issued a guideline “*174/001: Variants of Sex Development*”,⁴⁹ which both in principle recommend to postpone irreversible surgery, but both contain loopholes and advocate for “*exceptions*”, and both are NOT legally binding.

On the side of “*legal standards*”, meanwhile the Government admits, “*the total number of interventions does not appear to have changed significantly, even if it is partly stated that the ‘senseless to criminal operations’ are a thing of the past*” and “*discusses*” the “*Necessity of prohibition standards*”,⁵⁰ and further admits that the current anti-sterilisation legislation is ineffective to adequately protect intersex children, arguing: “*Parents should not only not be able to consent to sterilisations for their child, but also not to interventions that have a (optical) sex-adaptive effect.*”⁵¹

Since 1996⁵² the German government has been regularly called upon to undertake legislation to stop IGM practices – last in 2017 when CEDAW obliged Germany (CEDAW/C/DEU/CO/7-8, paras 23-24) to:

“(d) *Adopt clear legislative provisions explicitly prohibiting the performance of unnecessary surgical or other medical treatment on intersex children until they reach an age at which they can provide their free, prior and informed consent; [...]*”

And the Coalition Agreement 2018-21 of the current Government explicitly promises: “*We will make it clear by law that [...] medical interventions on [intersex] children are only permissible in cases that cannot be postponed and in order to avert danger to life.*”⁵³ A bold promise repeatedly publicly reaffirmed since by German officials⁵⁴ including the Minister of Justice.⁵⁵

48 https://www.bundesaerztekammer.de/fileadmin/user_upload/downloads/pdf-Ordner/Stellungnahmen/BAeK-Stn_DSD.pdf

49 https://www.awmf.org/uploads/tx_szleitlinien/174-001I_S2k_Geschlechtsentwicklung-Varianten_2016-08_01.pdf

50 Interministerial Working Group (2016), “Focus on the situation of trans- and intersexual people”. Status information of the BMFSFJ. Accompanying material to the Interministerial Working Group on Inter- & Transsexuality - Volume 5, Berlin, p. 18, <https://www.bmfsfj.de/blob/112092/f199e9c4b77f89d0a5aa825228384e08/imag-band-5-situation-von-trans-und-intersexuellen-menschen-data.pdf>

51 https://www.buzzfeed.com/de/julianeloeffler/groko-operationsverbot-intergeschlechtliche-kinder?utm_term=.wkljqeaB5#.piL4wk8dP

52 http://intersex.shadowreport.org/public/2015-CRPD-LoI-Germany_NGO-Report_Zwischengeschlecht_Intersex-IGM.pdf

53 CDU, CSU und SPD (2018): Coalition Agreement for 19th Legislative Term, p. 21, lines 797-799. https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf?file=1

54 See UN Press release, 25.09.2018, Committee on Economic, Social and Cultural Rights reviews report of Germany, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23633&LangID=E>

55 See above p. 19

Nonetheless, to this day the **German government** undeviatingly **refuses** to “*take effective legislative, administrative, judicial or other measures*” to protect intersex children, but instead continues with a perpetual cycle of denial and **endless discussions, roundtables, and yet more studies without any actual consequences** ever – **the current Government** same as the one before, and so on and on ...

Tellingly, a publication the **Department of Justice (BMJV)** on the one hand argues legislation against IGM practice would be **unnecessary**, claiming **IGM would already fall under the prohibition** according to § 226a StGB (Female Genital Mutilation), §§ 223 ff. StGB (bodily harm) and to some extent § 1631c BGB (prohibition of sterilisation), but on the other hand at the same time **claims legal prohibition would be** potentially harmful, “*not in the best interest of the child*” and “*not helpful*” for “*parents in a difficult psychological decision situation*”, as “*counselling seems more necessary than prohibitions*”.⁵⁶

The underlying **continuing refusal** of the German past and present government to **acknowledge the serious violations** constituted by IGM practices, in conjunction with the – despite repeated promises to enact “*clarifying legal provision as soon as possible*” (see above p. 18) – continued **unwillingness to guarantee non-derogable protections also to intersex children**, is also evidenced in the State party’s **(non-)answers to the LOIPR** (see above p. 17-20).

2. Recommendation (b) – Data Collection, Redress and Compensation

(b) Undertake investigation of incidents of surgical and other medical treatment of intersex people without effective consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation;

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 an insurmountable obstacle.⁵⁷ This is **well-known to and publicly admitted by the Government** at least regarding Civil Law, referring to “*claims*” of intersex advocates for “*prolongation of limitation periods for asserting civil claims under medical malpractice law*”.⁵⁸

Accordingly, in **2017 CEDAW obliged Germany** (CEDAW/C/DEU/CO/7-8, paras 23-24) to:

“(e) Ensure the effective access to justice, including by amending the statute of limitations, of intersex persons who have undergone unnecessary surgical or other medical treatment without their free, prior and informed consent; and consider the proposal of the German Ethics Council to establish a State compensation fund.”

56 BMFSFJ (ed.): „Situation von trans- und intersexuellen Menschen im Fokus“. Sachstandsinformation, p. 20-22: <https://www.bmfsfj.de/blob/112092/46d6be33eb8f2b5d2ee81488da03029c/situation-von-tans--und-intersexuellen-menschen-im-fokus-data.pdf>

57 Globally, no survivor of early surgeries **ever** managed to have their case heard in court. All relevant court cases (3 in Germany, 1 in the USA) were either about surgery of adults, or initiated by foster parents.

58 Interministerial Working Group (2016), "Focus on the situation of trans- and intersexual people". Status information of the BMFSFJ. Accompanying material to the Interministerial Working Group on Inter- & Transsexuality - Volume 5, Berlin, p. 17, <https://www.bmfsfj.de/blob/112092/f199e9c4b77f89d0a5aa825228384e08/imag-band-5-situation-von-trans-und-intersexuellen-menschen-data.pdf>

As the following overview shows, **the lack of access to justice, redress and compensation** for survivors of IGM practices is **well known and near total**.

(For detailed evidence, sources and Case Studies, see Annexe 1, p. 27-31.)

In addition, as highlighted above (p. 15), effective after 2014 the Government **stopped publishing any data on IGM practices**, despite being obliged to collect and publish disaggregated data by Treaty bodies.

a) Criminal Law (see also p. 27)

No survivor of IGM practices ever succeeded in filing criminal charges.⁵⁹ For survivors of early surgeries *“in the first two years of life”*, all **statutes of limitations** have long passed before survivors come of age. To this day, **all calls** from different sides, including from human rights bodies and some Government sectors, for a **legal review of the statutes of limitations** in cases of IGM practices did not bring any tangible results.

b) Civil Law (see also p. 28-29)

No survivor of childhood IGM practices ever succeeded in filing civil charges. Only 3 survivors of IGM practices so far succeeded in filing civil charges – all of them only for surgeries they were submitted to as **adults of 18 years** or older (see p. 28). All other survivors of IGM practices attempting to sue so far were **prevented by the statutes of limitations**.

c) Victim’s Compensation Law (Opferentschädigungsgesetz, OEG) (see p. 29-31)

So far, no survivor of IGM practices succeeded in winning any OEG compensation, with the courts consistently denying compensation to at least **4 IGM claimants** (see p. 29-31), including by explicitly stating that for the plaintiff to be eligible for compensation, *“there would have to be laws [against IGM] in place. However, there aren’t”* (see Case 2, p. 29). In another case originally initiated in 2009 (!), on **19.12.2018** the Social court eventually **denied compensation** arguing non-consensual full **clitoridectomy** and involuntary **human experimentation with “Androcur”** would both **not constitute a “punishable criminal offence”**, adding: *“Also a human experiment and torture [or CIDT] is not to be assumed”* (see Case 4, p. 30-31).

d) Compensation Fund

A longstanding demand is a **compensation fund for IGM survivors** unable to pursue legal avenues, for example due to the statutes of limitations. In 2012 the **German Ethics Council** recommended to **establish a compensation fund**.⁶⁰ And in 2017 CEDAW explicitly obliged Germany (CEDAW/C/DEU/CO/7-8, paras 23-24) to *“consider the proposal of the German Ethics Council to establish a State compensation fund”*.

This all is **well-known to and publicly admitted** by the Government confirming in 2016, *“Other claims touch on the question of the establishment of a compensation fund for people who have had sex-assigning surgeries in the past”*.⁶¹

However, to this day the Government refuses to undertake any actual steps, again ...

59 E.g. Staatsanwaltschaft Hamburg, Az. 7200 Js 63/10 and LKA Hamburg, Az. LKA 533a/1K/0203909/200

60 Stellungnahme „Intersexualität“, 14. Februar 2012 (BT – Drs. 17/9088), S. 176

61 Interministerial Working Group (2016), "Focus on the situation of trans- and intersexual people". Status information of the BMFSFJ. Accompanying material to the Interministerial Working Group on Inter- & Transsexuality - Volume 5, Berlin, p. 17, <https://www.bmfsfj.de/blob/112092/f199e9c4b77f89d0a5aa825228384e08/imag-band-5-situation-von-trans-und-intersexuellen-menschen-data.pdf>

3. Recommendations (c) + (d) – Lack of Adequate Support, Lack of Education

(c) Educate and train medical and psychological professionals on the range of sexual, and related biological and physical, diversity; and

(d) Properly inform patients and their parents of the consequences of unnecessary surgical and other medical interventions for intersex people.

Similarly, in **2017 CEDAW obliged Germany** (CEDAW/C/DEU/CO/7-8, paras 23-24) to:

“(d) [...] provide the families of intersex children with adequate counselling and support; and ensure that the German Medical Association provides information to medical professionals on the legal prohibition of unnecessary surgical or other medical interventions for intersex children;”

The **lack of adequate support for intersex children and their families** – including **access to peer support** – as well as the **lack of human rights-based education and training for medical professionals** have been long-standing criticisms of intersex advocates.

However, once more the Government continues to refuse to undertake any actual steps.

G. Conclusion: 20 Years of Endless Talk, But No Action

At least since 1996⁶² the German government has been regularly called upon to

- undertake **legislation to prohibit** IGM practices
- guarantee **access to redress** for IGM survivors
- ensure **adequate support** for intersex children and their families
- systematically **collect disaggregated data**,

including by its own **Conference of Ministers for Women's Issues and Equality (GFMK)**.

UN Treaty bodies **CAT**, **CRPD** and **CEDAW** have urged Germany, inter alia, to “[a]dopt clear legislative provisions explicitly prohibiting the performance of unnecessary surgical or other medical treatment on intersex children”, to “adopt legal provisions in order to provide redress to the victims of such treatment”, to “[s]ystematically collect disaggregated data”, to “establish a State compensation fund”, and to “provide families with intersex children with adequate counselling and support”.

Since then, on the positive side the **current German Government** has to be commended for being the **very first** to publicly **acknowledge the need for legislative measures** to prevent IGM practices, and to publicly **promise swift legislative provisions** (see p. 20).

Unfortunately, on the side of **implementation**, action is still **sorely lacking** (see p. 27).

As substantiated, the **State party is categorically failing to meet its obligations under the Convention** towards intersex people, and in particular towards intersex children, including 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, GC 2) (see p. 27).

Adult 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, GC 3) (see p. 27-31).

Also Germany's 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), as evidenced by the fact that **involuntary, non-urgent interventions continue**, paid for by the Public health system (see Annexe 2, p. 32-35).

To this day, Germany fails to take any effective legislative or other action to protect intersex children (in line with obligations under CAT, CCPR, CRC, CEDAW, CRPD), but – as again evidenced by the State party's **(non-)answers on intersex** in the State report – instead continues with a **perpetual cycle of denial** and endless discussions, roundtables, expert meetings, “*careful examination*” and **yet more studies** – but so far **without any actual consequences ever** – the current Government same as the one before, and so on and on ...

*“For more than 20 years, all the government does is talk and talk and talk. As intersex persons and IGM survivors we finally want to see actions, including on prohibition under criminal law, access to redress and justice, and abolition of statutes of limitations.”*⁶³

62 See 2015 CRPD Germany NGO Report (p. 20-22), <http://intersex.shadowreport.org/public/2015-CRPD-LoI-Germany-NGO-Report-Zwischengeschlecht-Intersex-IGM.pdf>

63 StopIGM.org / OII Germany: JointNGO Oral Statement CEDAW66 Germany, 20.02.2017, delivered by

H. Suggested Recommendations

The Rapporteurs respectfully suggest that, with respect to the treatment of intersex persons in Germany, the Committee includes the following measures in their recommendations to the German Government (in line with this Committee's previous recommendations, and with CRPD's and CEDAW's previous recommendation to Germany):

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

The Committee remains concerned about reports that unnecessary and irreversible surgery and other medical treatments are performed on intersex children without their informed consent and impartial counselling. It is concerned that such procedures, which cause long-term physical and psychological suffering, have not been the object of any inquiry, sanction or reparation and that there are no specific legal provisions providing redress and rehabilitation to the victims (arts. 2, 12, 14, 16).

The Committee recommends that the State party:

- (a) Take the legislative, administrative and other measures necessary to guarantee respect for the physical integrity and autonomy of intersex persons and to ensure that no one is subjected during infancy or childhood to non-urgent medical or surgical procedures without his or her informed consent;**
- (b) Guarantee impartial counselling services and psychosocial support for all intersex children and their parents, so as to inform them of the consequences of non-urgent, unnecessary surgery and other medical treatment and the possibility of postponing any decision on such treatment or surgery until the persons concerned are able to decide for themselves;**
- (c) Guarantee that full, free and informed consent is ensured in connection with medical and surgical treatments for intersex persons and that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give effective consent;**
- (d) Undertake investigation of instances of surgical interventions or other medical procedures performed on intersex persons without effective consent and prosecute and, if found responsible, punish perpetrators. Adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation.**

Annexe 1: Lack of Access to Justice, Redress, Compensation

1. Statutes of Limitations and Lack of explicit Prohibition: Main Obstacles preventing Access to Justice for IGM Survivors

Generally, the **statutes of limitation** prevent survivors of early childhood IGM Practices to call a court, because IGM survivors often do not find out about their medical history until much later in life, which in combination **refusal of hospitals to provide access to medical records** and severe trauma caused by IGM Practices regularly prove to amount to an insurmountable obstacle.⁶⁴

This is **well-known to and publicly admitted by the Government** at least regarding Civil Law, referring to “*claims*” of intersex advocates for “*prolongation of limitation periods for asserting civil claims under medical malpractice law*”.⁶⁵

Also the fact that the **lack of explicit legislative prohibition of IGM practices** constitutes yet another insurmountable obstacle to IGM survivors seeking redress has been **publicly admitted by the Federal government**,⁶⁶ as well as by **various Social Courts**.

Accordingly, in 2011 this Committee has already recommended Germany, inter alia, to “*adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation*”, seconded by **CRPD** in 2015.

And in **2017 also CEDAW obliged Germany** (CEDAW/C/DEU/CO/7-8, paras 23-24) to:

“(e) *Ensure the effective access to justice, including by amending the statute of limitations, of intersex persons who have undergone unnecessary surgical or other medical treatment without their free, prior and informed consent; and consider the proposal of the German Ethics Council to establish a State compensation fund.*”

In addition, CEDAW urged Germany to “*Systematically collect disaggregated data on the incidence of harmful practices in the State party*”. Nonetheless, after 2014 the Government **stopped publishing any data on IGM practices** (see p. 15).

2. IGM Practices: Known German Case Law

As the following section documenting the situation in different legal frameworks show, **the lack of access to justice, redress and compensation** for survivors of IGM practices in Germany is **well known and near total**:

a) Criminal Law: 0 Cases

No survivor of IGM practices ever succeeded in filing criminal charges.

64 Globally, no survivor of early surgeries **ever** managed to have their case heard in court. All relevant court cases (3 in Germany, 1 in the USA) were either about surgery of adults, or initiated by foster parents.

65 Interministerial Working Group (2016), "Focus on the situation of trans- and intersexual people". Status information of the BMFSFJ. Accompanying material to the Interministerial Working Group on Inter- & Transsexuality - Volume 5, Berlin, p. 17, <https://www.bmfsfj.de/blob/112092/f199e9c4b77f89d0a5aa825228384e08/imag-band-5-situation-von-trans-und-intersexuellen-menschen-data.pdf>

66 The **Coalition Agreement 2018-21** of the current Government explicitly promises: “*We will make it clear by law that [...] medical interventions on [intersex] children are **only permissible** in cases that cannot be postponed and in order to avert danger to life.*”
CDU, CSU und SPD (2018): Coalition Agreement for 19th Legislative Term, p. 21, lines 797-799.
https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf?file=1

In case of average early surgeries “*in the first two years of life*”, all statutes of limitations have long passed before survivors come of age.

To this day, persons concerned and their organisations in vain **call for a legal review of the statutes of limitations in cases of IGM practices**, referring to current and recent legal reviews regarding **adjournment or suspension of the statutes of limitation** in cases of child sexual abuse (§§ 176 ff. StGB), and female genital mutilation (§ 226a StGB).

In 2014, also the **24th Conference of Ministers for Women’s Issues and Equality (GFMK)** explicitly called for a “*legal ban of medically unnecessary surgical and pharmacological [...] interventions on intersex minors,*” explicitly referring to **the need of intersex children for similar protection against sterilisation (§ 1631c BGB) and female genital mutilation (§ 226a StGB)** that other children and girls already enjoy.⁶⁷

b) Civil Law: 3 successful/ongoing Adult Cases

No survivor of childhood IGM practices ever succeeded in filing civil charges.

Only 3 survivors of IGM practices so far succeeded in filing civil charges – all of them only for surgeries they were submitted to as **adults of 18 years** or older.

All other survivors of IGM practices attempting to sue so far were prevented by the statutes of limitations.

Already in 2009 during an intersex hearing of the State Parliament of Hamburg, specialised local lawyer Dr. Oliver Tolmein stated: “*Interestingly, a great many [intersex] persons come to our lawyer’s office wanting to sue their doctors for damages [however, so far all were prevented by the statutes of limitations]*”.⁶⁸

Case 1: The first case in Cologne 2007-2009 filed by Christiane Völling concerned the removal of ovaries and uterus without informed consent and resulted in a surgeon being sentenced to pay **100’000 Euros damages**.^{69 70 71}

Case 2: Case filed 2012 in Munich.⁷² In the meantime the claimant agreed to a **settlement** as the person couldn’t afford to continue a costly, lengthy civil law suit.

Case 3: Case filed 2011 in Nuremberg⁷³ by Michaela Raab concerning involuntary partial clitoris amputation and gonadectomy (castration), with a **first instance verdict on 17.12.2015** sentencing the Erlangen University Clinic to **pay damages**.^{74 75} After the defendants lodged an appeal, the

67 at 52-54

http://www.gleichstellungsministerkonferenz.de/documents/2014_10_13_Beschluesse_GESAMT_Extern.pdf

68 Wortprotokoll, at 11 http://kastrationsspital.ch/public/19_10_HH_Wortpr_Intersex.pdf

69 OLG Köln 03.09.2008, Az. 5 U 51/08

http://www.justiz.nrw.de/nrwe/olgs/koeln/j2008/5_U_51_08beschluss20080903.html

70 LG Köln 12.08.2009, Az. 25 O 179/07

http://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2009/25_O_179_07schlussurteil20090812.html

71 DPA (2009), Christiane Völling: Hermaphrodite wins damage claim over removal of reproductive organs,

<http://zwischenengeschlecht.org/pages/Hermaphrodite-wins-damage-claim>

72 LG München, Az. 9 O 27981/12.

73 LG Nürnberg-Fürth, Az. 4 O 7000/11. 1st day in court was 26.02.2015.

74 Sentence LG Nürnberg-Fürth, 17.12.2015, Az. 4 O 7000/11.

75 StopIGM.org (2015), <http://stop.genitalmutilation.org/post/Nuremberg-Hermaphrodite-Lawsuit-Damages-and-Compensation-for-Intersex-Genital-Mutilations>

case is currently in the **second instance** at the Higher Court (OLG),⁷⁶ After **almost 3 years of inactivity**, recently a court date has been set for **07.02.2019** to “appraise the facts” and “attempt a settlement”.

c) Victim’s Compensation Law (OEG): 4 failed/ongoing Cases

The Victims Compensation Law (Opferentschädigungsgesetz, OEG) was introduced with the **stated intent** “to create a financial compensation in cases of the state failing its mission to prevent crimes”.⁷⁷

So far, no survivor of IGM practices succeeded in winning any compensation, with the courts consistently denying compensation to IGM victims, including by explicitly stating that for the plaintiff to be eligible for compensation, “*there would have to be laws [against IGM practices] in place. However, there aren’t.*” (see below Case 2)

Another case, originally initiated in Hamburg in 2009 (!), has currently been **resting in the second instance** (Social Court Hamburg) for **69 months without any development**, before the court eventually concluded that non-consensual full clitoridectomy and medical experimentation with “Androcur” would constitute “*state of the art*” **legal medical interventions** “*serv[ing] the well-being of the patient*”, and that – contrary to CAT/C/DEU/CO/5, para 20; CRPD/C/DEU/CO/1, paras 37-38; CEDAW/C/DEU/CO/7-8, paras 23-24; CCPR/C/DEU/QPR/7, para 13 – “[a]lso a human experiment and torture [or CIDT] is not to be assumed” (see below Case 4).

Case 1:⁷⁸ Survivor of IGM practices with acknowledged disability grade (GdB) due to IGM, unable to work. **Right to compensation denied by court** in 2012, on the grounds of lacking “*hostile intent*” (“*feindselige Absicht*”) of perpetrating doctors, referring to lack of “*own financial interests of treating clinicians*”.⁷⁹

Case 2: Survivor of IGM practices with acknowledged disability grade (GdB) of 80% due to IGM, unable to work. **Right to compensation denied by court** in 2012, on the grounds of lacking “*hostile intent*” (“*feindselige Absicht*”) of perpetrating doctors. As mentioned above (D.2.), in addition the court explicitly stated, for the plaintiff to be eligible for compensation “*there would have to be laws [against IGM practices] in place. However, there aren’t.*”⁸⁰

76 OLG Nürnberg, Az. 5 U 53/16.

77 Franziska Brachthäuser, Theresa Richarz (2014): Zwischen Norm und Geschlecht – Erste Entwürfe möglicher nationaler Entschädigungs- und Schadensersatzansprüche intersexueller Menschen gegen die Bundesrepublik Deutschland, Humboldt Law Clinic: Menschenrechte, Working Paper Nr. 5, at 22-24 (p. 19-21 in PDF) http://hlcmr.de/wp-content/uploads/2015/01/Working_Paper_Nr.5.pdf

78 Although this person is personally known to the rapporteurs, here the case details are taken from: Franziska Brachthäuser, Theresa Richarz (2014): Zwischen Norm und Geschlecht – Erste Entwürfe möglicher nationaler Entschädigungs- und Schadensersatzansprüche intersexueller Menschen gegen die Bundesrepublik Deutschland, Humboldt Law Clinic Menschenrechte (HLCMR) Working Paper Nr. 5, at 9, 11 (i.e. 6, 8 according to page numbers within document) http://hlcmr.de/wp-content/uploads/2015/01/Working_Paper_Nr.5.pdf
(All other cases are based on personal interviews.)

79 SG Trier, 07.02.2012 Az. S 6 VG 10/ 11 Tr. (unpublished)

80 SG Bayreuth, 01.08.2012, Az. S 4 VG 5/11 (unpublished); see also relevant quote in Nürnberger Nachrichten (04.11.2013) <https://web.archive.org/web/20131114044728/http://www.nordbayern.de/nuernberger->

Case 3: Survivor of IGM practices with acknowledged disability grade (GdB) of 60% due to IGM, unable to work. **Right to compensation denied by court** in 2014, on the grounds of lacking “*hostile intent*” (“*feindselige Absicht*”) of perpetrating doctors.⁸¹

Case 4: Survivor of IGM practices with acknowledged disability grade (GdB) of 50% due to IGM, unable to work. Born 1972, at age 5 the person concerned was submitted to a **non-consensual full clitoridectomy and vaginoplasty**, and from 1979-1983 to **involuntary human experimentation with “Androcur”** (the risky, meanwhile discredited preparation best known for its application for “chemical castration” of sex offenders). On **29.10.2009** the person concerned first submitted an informal **application for OEG compensation**, together with the application for disability grade. On **25.06.2010** the person followed-up with a formal application to the State Ministry for Work, Social Affairs, Family and Intergration (BASFI) Hamburg.⁸² On **19.03.2012** the lawyer of the person concerned explicitly informed the State ministry of the recent **CAT Concluding Observations for Germany** on involuntary intersex procedures (CAT/C/DEU/CO/5, para 20).

Right to compensation denied by State ministry in 2013, on the grounds of lacking “*hostile intent*” (“*feindselige Absicht*”), stating the deeds in question, including **non-consensual full clitoridectomy and human experimentation with “Androcur**, would **not constitute a punishable criminal offense**.⁸³

On **02.04.2013** the person concerned lodged an **appeal** at the **Social Court Hamburg**.⁸⁴ There, the **case rested for over 69 months**.

On **19.12.2018** the **Social court eventually denied compensation**,⁸⁵ arguing the non-consensual full clitoridectomy and medical experimentation with “Androcur” would constitute a **legal medical therapy for intersex children** still recommended today, which would “*serve the well-being of the patient*”, further directly **contradicting this Committee’s Concluding Observations** on intersex interventions in Germany, considered as inhuman treatment under CAT arts. 2, 10, 12, 14 and 16 (CAT/C/DEU/CO/5, para 20):

*“At the beginning of the 70's of the last century an **early correction of the external genital at Prader stage III** was recommended. **Even today, surgery in the first two years of life is recommended**. It is only since a few years that the choice of the timing of surgery has been controversially discussed in science. Since the surgery corresponds to the **state of science**, i.e. serves the well-being of the patient, an **assault** in the sense of the OEG is not given. Also a **human experiment and torture [or CIDT]** is not to be assumed.”* (p. 3-4)

[nachrichten/region-bayern/schmerzliche-suche-nach-dem-eigenen-geschlecht-1.3257295](https://www.nachrichten/region-bayern/schmerzliche-suche-nach-dem-eigenen-geschlecht-1.3257295)

81 SG Nürnberg, 16.07.2014, Az. S 15 VG 9/12 (unpublished)

82 Az. FS 53123-17770/10-OEG (unpublished).

83 State Ministry for Work, Social Affairs, Family and Intergration (BASFI) Hamburg, 19.03.2013, Az. FS 53123-17770/10-OEG (unpublished)

84 SG Hamburg, Az. S 12 VE 46/14

85 SG Hamburg, 19.12.2018, Az. S 12 VE 46/14,

http://zwschengeschlecht.org/public/Hamburg-Intersex-OEG-Urteil-19-12-2018_S-12-VE_46-14_web.pdf

Accordingly, in its conclusion the Social Court Hamburg reiterated, the IGM practices in question would **not constitute** “*punishable medical interventions*”, but again “*objectively [...] serve [the] well-being*” of the person concerned:

“The plaintiff has not become a victim of violence in the sense of the OEG, because neither the surgery at the age of five nor the treatment with Androcur nor the bladder puncture are punishable medical interventions, which objectively, i.e. from the point of view of a reasonable third party, did not serve their well-being.” (p. 8)

On **21.01.2019** the person concerned lodged an appeal against this verdict to the **Higher Social Court Hamburg** (Landessozialgericht LSG Hamburg), bracing for more years of slow-moving proceedings in this case soon to be dragging on for more than a decade.

This situation is clearly not in line with Germany’s obligations under the Convention.

d) Compensation Fund

A longstanding demand is a **compensation fund for IGM survivors** unable to pursue legal avenues, for example due to the statutes of limitations. In 2012 the **German Ethics Council** recommended to **establish a compensation fund**.⁸⁶ And in 2017 **CEDAW** explicitly obliged Germany (CEDAW/C/DEU/CO/7-8, paras 23-24) to “*consider the proposal of the German Ethics Council to establish a State compensation fund*”.

This all is **well-known to and publicly admitted by** the Government confirming in 2016, “*Other claims touch on the question of the establishment of a compensation fund for people who have had sex-assigning surgeries in the past*”.⁸⁷

However, to this day the Government refuses to undertake any actual steps, again ...

86 Stellungnahme „Intersexualität“, 14. Februar 2012 (BT – Drs. 17/9088), S. 176
Interministerial Working Group (2016), "Focus on the situation of trans- and intersexual people". Status information of the BMFSFJ. Accompanying material to the Interministerial Working Group on Inter- & Transsexuality - Volume 5, Berlin, p. 17, <https://www.bmfsfj.de/blob/112092/f199e9c4b77f89d0a5aa825228384e08/imag-band-5-situation-von-trans-und-intersexuellen-menschen-data.pdf>

Annexe 2: Most Recent Statistics Available on IGM in Germany

In Germany all forms of **IGM practices remain widespread and ongoing**, persistently **advocated, prescribed and perpetrated** by state funded University and Regional Children’s Clinics, and **paid for** by the German Public Health Insurances, as corroborated by two 2016 studies using **partial data from the “Diagnosis Related Groups (DRG)”** of intersex surgeries in German hospitals financed by the Public Health System, and reporting on **average 1,700 IGM procedures every year**. At the same time, access to **adequate psychosocial counselling and peer support remains sorely lacking**.

Study 1: Ulrike Klöppel (2016): Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter. ZtG Texte 42: https://www.gender.hu-berlin.de/de/publikationen/gender-bulletins/bulletin-texte/texte-42/kloepfel-2016_zur-aktualitaet-kosmetischer-genitaloperationen

Study 2: Anike Krämer (M.A.), Prof. Dr. Katja Sabisch, Dr. med. Jörg Woweries (2016): Varianten der Geschlechtsentwicklung – die Vielfalt der Natur. Kinder- und Jugendarzt. 47. Jg. (2016) Nr. 5/16: <http://www.vlsp.de/files/pdf/kraemer2016.pdf>

Both studies, which were commissioned by the Federal Government, **provide NO disaggregated regional data** on procedures in individual Länder or clinics, citing **“privacy concerns”**.

After 2014, no more data on IGM at all has been published by the Federal Government so far – despite that **since at least 1996** the German government has been regularly called upon to **collect and disclose statistics** on IGM practices, and **CAT, CRPD and CEDAW** have urged Germany to **“investigate cases”** and **“[s]ystematically collect disaggregated data”**.

The following sections summarise **key findings on the most frequent forms of IGM practices** as documented in the mentioned two 2016 studies:

a) IGM 3 – Sterilising Procedures:

Castration / “Gonadectomy” / Hysterectomy /

Removal of “Discordant Reproductive Structures” / (Secondary) Sterilisation⁸⁸

Study 1⁸⁹ documents ongoing gonadectomies on children 0-9 and 10-19 years with a limited selection of “intersex diagnoses” 2005-14, averaging at **almost 4 procedures annually**. On intersex persons raised as **girls**, gonadectomies were more frequent (58:25). In girls and boys **Q99.1 “46, XX true hermaphrodite”** was the most frequent diagnosis.

Tab. 18

Gonadektomien (5-652 & 5-653)											
Intersex, weiblich registriert, 0-9 Jahre											
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-14
gesamt	2,5	0	4,5	3	0	0	0	1	0	2	19
Intersex, weiblich registriert, 10-19 Jahre											
gesamt	2,5	6,5	4	8	0	2,5	2,5	3,5	5,5	3	38

Figure 1: Intersex Gonadectomies on Females by Age Group, p. 52(48)

88 For general information, see 2016 CRC NGO Report UK, p. 43-44, 63:

http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

89 Ulrike Klöppel: Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter.:

https://www.gender.hu-berlin.de/de/publikationen/gender-bulletins/bulletin-texte/texte-42/kloepfel-2016_zur-aktualitaet-kosmetischer-genitaloperationen

b) IGM 2 – “Feminising Procedures”: Clitoris Amputation/“Reduction”, “Vaginoplasty”, “Labioplasty”, Dilatation⁹⁰

According to **Study 1**, “feminizing surgeries” on intersex children 0-9 years were **rising**, with the **five-year-average increasing from 70 to 79 procedures per year**:

Tab. 12

Feminisierende Operationen													
Q52, weiblich registriert, 0-9 Jahre													
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	MW/2005-7	MW/2012-14	%
5-705	2,5	7,0	5,0	6,0	7,5	6,5	3,0	7,5	7,0	4,5	4,8	6,3	31,03
5-706	1,5	7,5	4,0	4,5	1,5	4,0	7,5	3,0	4,0	4,5	4,3	3,8	-11,54
5-713	1,5	1,5	4,5	3,0	1,5	7,0	7,5	4,5	13,0	4,5	2,5	7,3	193,33
5-716	9,0	19,5	8,5	9,0	8,0	8,0	19,0	10,5	12,0	10,0	12,3	10,8	-12,16
5-718	42,5	48,5	48,0	41,0	44,0	34,0	40,0	52,5	46,0	54,0	46,3	50,8	9,71
Fem OPS	57,0	84,0	70,0	63,5	62,5	59,5	77,0	78,0	82,0	77,5	70,3	79,2	12,56

Figure 2: “Feminising” IGM Surgeries on children 0-9 years, p. 42(38)

Study 1 documents **164 cases of “clitoral surgery”** on intersex children 0-9 years. After 2008, when for the first – and still last – time an IGM surgeon was sentenced in the last instance to pay damages for a non-consensual procedure on an adult person, “clitoral surgery” decreased in the five-year-average from 20 to 11 procedures per year ...

Tab. 16

Operationen an der Klitoris (5-713)													
VG, weiblich registriert, 0-9 Jahre													
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	MW/2005-7	MW/2012-14	%
AGS	18	15,5	10,5	15	13	7	10,5	4,5	3	4,5	14,7	4,0	-72,73
Inter (ohne AGS)	4,5	0	5	3	1	0	0	0	0	1	3,2	0,3	-89,47
Q52	1,5	1,5	4,5	3	1,5	7	7,5	4,5	13	4,5	2,5	7,3	193,33
gesamt	24	17	20	21	15,5	14	18	9	16	10	20,3	11,7	-42,62

Figure 3: “Clitoral Surgery” on intersex children 0-9 years, p. 48(44)

90 For general information, see 2016 CRC NGO Report UK, p. 44-45, 62:

http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

... however with the notable exception of the **age group < 1 year**, where the numbers not only stayed steady (at around 5–10 surgeries per year)...

Diagramm 6

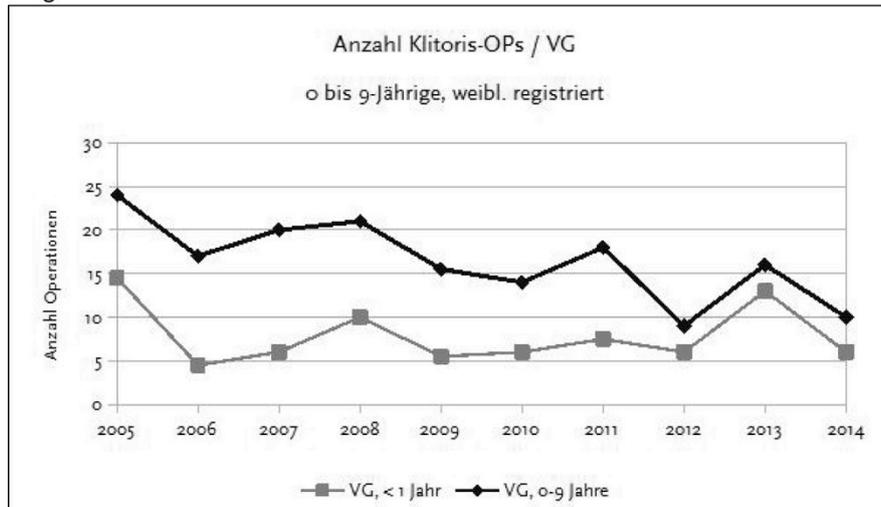


Figure 4: "Clitoral Surgery" 0-9 years vs. <1 year, p. 49(45)

... but after 2011, after the questionable "Opinion on the Situation of Intersex People" of the German National Ethics Council, according to **Study 2, procedures on <1 year olds became most frequent in young children (at around 8–13 surgeries every year)**, surpassing procedures on girls 1-5 years (at around 4–7 surgeries per year), additionally suggesting rising numbers in early school age, allegedly with the "consent" of the children concerned:

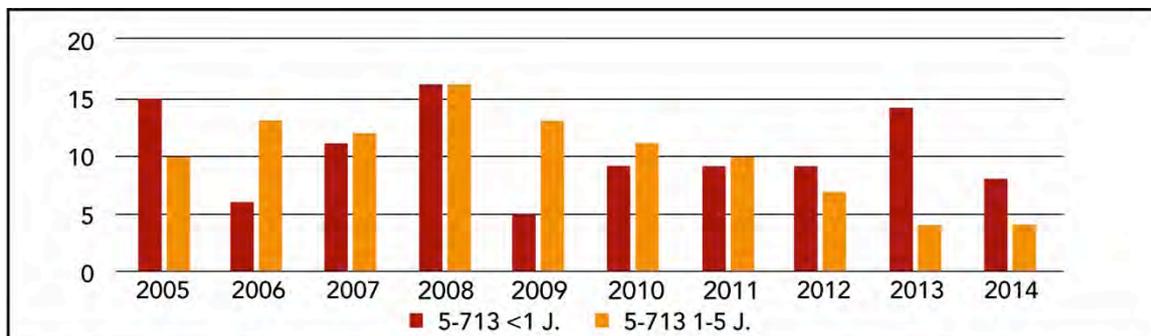


Abb. 2: DRG 5-713 Operation an der Klitoris

KINDER- UND JUGENDARZT 47. Jg. (2016) Nr. 5/16

Figure 5: "Clitoral Surgery" 1-5 years vs. <1 year, p. 320

c) IGM 1 – “Masculinising Surgery”: Hypospadias “Repair”⁹¹

According to **Study 2, Q54 “Hypospadias”** remains the most frequent IGM practice by far, with **over 1’400 procedures every year** on children 0-9, even when discarding procedures of the “*First degree (Q54.0)*” and counting only the second and third degree (Q54.1-3). In addition, Q55 “*Other congenital malformations of male genital organs*” shows the biggest increase in procedures. In average, there are **1600 masculinising procedures annually**:

Tab. 20

Maskulinisierende Operationen													
VG, männlich registriert, 0-9 Jahre													
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	MW 2005-7	MW 2012-14	%
E29.1	0	0	0	0	0	0	0	0	0	0	0,0	0,0	#
E34.5	0	1	2	0	1	0	0	0	0	2	1,0	0,7	-33,33
Q56.0	1,5	0	0	0	0	0	0	0	0	0	0,5	0,0	-100
Q56.1	4	0	3,5	1	2,5	0	0	1	0	5	2,5	2,0	-20
Q56.2	0	0	1	0	0	1	0	0	0	0	0,3	0,0	-100
Q56.3	0	0	0	0	0	0	0	0	0	0	0,0	0,0	#
Q56.4	0	0	3	0	0	3	0	0	0	0	1,0	0,0	-100
Q99.0	0	0	3	0	0	0	0	0	0	0	1,0	0,0	-100
Q99.1	0	0	0	0	0	0	0	0	0	0	0,0	0,0	#
Inter (ohne AGS)	5,5	1	12,5	1	3,5	4	0	1	0	7	6,3	2,7	- 57,89
Q53.2	6	9,5	10	7,5	10,5	4,5	13,5	13,5	6	4,5	8,5	8,0	-5,88
Q54	1402,5	1475	1507	1626	1484	1394,5	1429	1359,5	1460,5	1476	1461,5	1432,0	-2,02
Q55	121	101,5	151	144,5	148	174	204,5	175,5	162,5	183,5	124,5	173,8	39,63
gesamt	1535	1587	1680,5	1779	1646	1577	1647	1549,5	1629	1672,5	1600,8	1617,0	1,01

Figure 6: “Masculinising” IGM Surgeries on children 0-9 years, p. 55(51)

d) Prenatal “Therapy”⁹²

Also prenatal “Therapy” with Dexamethasone is still advocated and practiced in Germany, for example in the official guideline “AWMF 174/013”⁹³ “*S1-Leitlinie – Stellungnahme zur pränatalen Therapie des Adrenogenitalen Syndroms mit 21-Hydroxylase-Defekt (AGS) in Deutschland*”, despite openly admitting that the “therapy” is “*no evidence based protocol*” (p. 3) and “*experimental*” (p. 6).

91 For general information, see 2016 CRC NGO Report UK, p. 45, 61.

http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

92 For general information, see 2014 CRC NGO Report Switzerland, p.75-76.

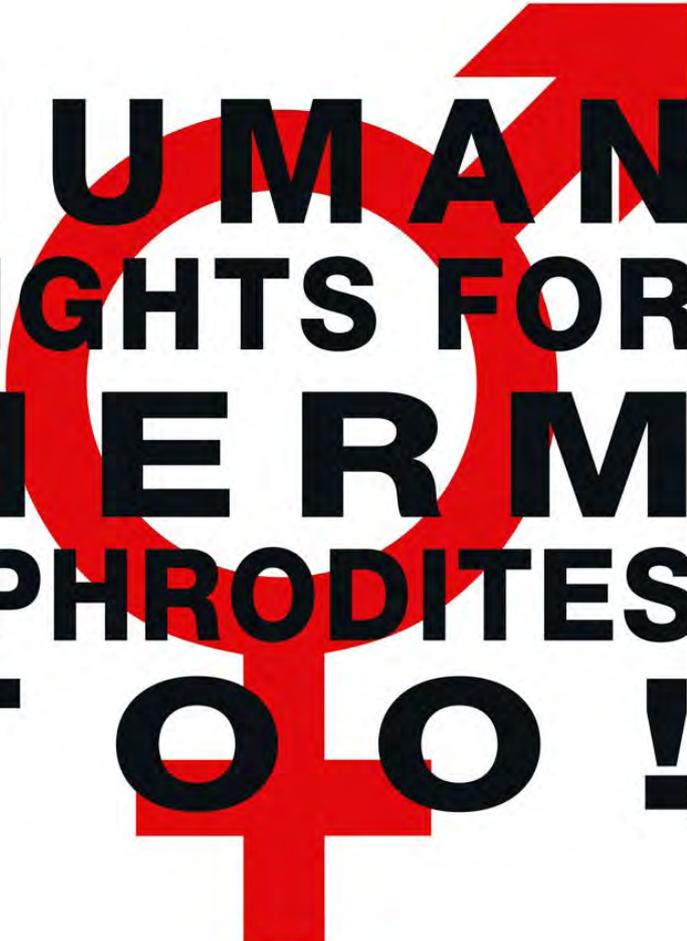
http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

93 http://www.awmf.org/uploads/tx_szleitlinien/174-

[013l_S1_Adrenogenitales_Syndrom_mit_21_Hydroxylase_Defekt_AGS_2015-verlaengert.pdf](http://www.awmf.org/uploads/tx_szleitlinien/174-013l_S1_Adrenogenitales_Syndrom_mit_21_Hydroxylase_Defekt_AGS_2015-verlaengert.pdf)

Intersex Genital Mutilations

Human Rights Violations Of Children With Variations Of Reproductive Anatomy



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