

Resolution on the Rights of Intersex People (2018/2878(RSP)): Concerns re: incomplete or inadequate Human Rights References

Dear Committee on Civil Liberties, Justice and Home Affairs

We are an international intersex human rights NGO which, in collaboration with local intersex advocates and organisations, regularly reports to UN Treaty bodies on intersex and IGM in currently 11 EU countries,¹ so far resulting in 19 Concluding Observations to EU countries, condemning Intersex Genital Mutilation as a serious violation of non-derogable human rights, namely harmful practice (CRC, CEDAW), torture or cruel, inhuman or degrading treatment (CAT, CCPR), non-consensual medical or scientific experimentation (CCPR), violation of the integrity of the person (CRPD).² Globally, we currently count 40 such Treaty body verdicts.³

As such we applaud the proposed Resolution on the rights of intersex people (2018/2878(RSP)), and in particular that it proposes to "strongly condemn" involuntary, non-urgent genital surgery and other treatments on intersex children, and to "welcome laws that prohibit such surgery" (para 1).

We are, however, concerned that the proposed Resolution unfortunately only incompletely references UN Conventions found applicable to IGM practices by the relevant Treaty bodies, and

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

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

3 CAT/C/DEU/CO/5, para 20; CRC/C/CHE/CO/2-4, paras 42-43; CRPD/C/DEU/CO/1, paras 37-38; CAT/C/CHE/CO/7, para 20; CRC/C/CHL/CO/4-5, paras 48-49; CAT/C/AUT/CO/6, paras 44-45; CAT/C/CHN-HKG/CO/4-5, paras 28-29; CAT/C/DNK/CO/6-7, paras 42-43; CRC/C/FRA/CO/5, paras 47-48; CRC/C/IRL/CO/3-4, paras 39-40; CRPD/C/CHL/CO/1, paras 41-42; CAT/C/FRA/CO/7, paras 34-35; CRC/C/NPL/CO/3-5, paras 41-42; CRC/C/GBR/CO/5, paras 46-47; CEDAW/C/FRA/CO/7-8, paras 18e-f+19e-f; CRPD/C/URY/CO, para 44; CRPD/C/ITA/CO/1, paras 45-46; CRC/C/NZL/CO/5, paras 25+15; CRC/C/ZAF/CO/2, paras 39-40+23-24; CEDAW/C/CHE/CO/4-5, paras 24-25, 38-39; CEDAW/C/NLD/CO/6, paras 21-22, 23-24; CEDAW/C/DEU/CO/7-8, paras 23-24; CEDAW/C/IRL/CO/6-7, paras 24-25; CCPR/C/CHE/CO/4, paras 24-25; CRPD/C/GBR/CO/1, paras 10(a)-11(a), 38-41; CRPD/C/MAR/CO/1, paras 36-37; CRC/C/DNK/CO/5, paras 24+12; CCPR/C/AUS/CO/6, paras 25-26; CRC/C/ESP/CO/5-6, para 24; CEDAW/C/CHL/CO/7, paras 22-23, 12(d)-13(d), 14(d)-15(d); CEDAW/C/LUX/CO/6-7, paras 27b-c+28b-c; CRC/C/ARG/CO/5-6, para 26; CEDAW/C/MEX/CO/9, para 21-22; CEDAW/C/NZL/CO/8, paras 23(c)-24(c); CEDAW/C/AUS/CO/8, paras 25(c)-26(c); CEDAW/C/LIE/CO/5, paras 35+36(c); CEDAW/C/NPL/CO/6, paras 18(c),(d)-19(a),(c),(d); CAT/C/NLD/CO/7, paras 52-53; CRC/C/ITA/CO/5-6, para 23; CRC/C/BEL/CO/5-6, paras 25(b)+26(e)

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

in one case misattributes the most salient human rights violation under CRC, with potentially harmful consequences for intersex children at risk of being submitted to involuntary harmful procedures; and we are further concerned that the proposed Resolution recommends grossly insufficient legislation, which reportedly fails intersex children at risk of IGM and which has been criticised by intersex advocates for years:

1. Incomplete References to UN Conventions

While the proposed Resolution has to be commended to name CAT (6 Concluding Observations since 2011), CRC (13 COs since 2015) and CRPD (6 Concluding COs since 2015), unfortunately it fails to recognise CCPR (2 COs since 2017) and CEDAW (12 COs since 2016). CCPR is important because the relevant COs explicitly frame IGM as a non-derogable violation (CCPR art. 7, freedom from torture and non-consensual medical or scientific experimentation), and CEDAW because the COs recognise IGM as a harmful practice (CEDAW art. 5), same as CRC (CRC art. 24(3)), making harmful practices the human rights framework most often referred to by UN Treaty bodies (currently 25 COs out of 40 in total).⁴

2. Inadequate Reference to CRC

Unfortunately, in para 7 the proposed Resolution misidentifies "the right to the highest attainable standard of health" (CRC art. 24(1)) as apparently the most important provision of CRC (in fact it is the only article/provision which is explicitly mentioned in all the Resolution), whereas the Committee on the Rights of the Child consistently refers to CRC art. 24(3) "harmful practices" instead. This distinction is important, because protection from harmful practices amounts to a non-derogable right, and therefore CRC art. 24(3) offers much stronger protections as compared to art. 24(1), in particular regarding effective legal provisions to prevent IGM and addressing obstacles to access to justice and redress for IGM survivors, namely the limitation periods.

3. Insufficient Legislation portrayed as good Policy to be followed

In para 2 the proposed Resolution hails Malta and Portugal as positive examples regarding "laws that prohibit [involuntary] surgery", and "encourages other Member States to adopt similar legislation as soon as possible". This is disturbing, because the laws both in Malta⁵ and Portugal⁶ are grossly insufficient to effectively prevent IGM practices, and have been criticised as such by intersex advocates for years. In particular, it should be duly noted that both laws fail to criminalise or adequately sanction IGM practices, or to address obstacles to access to justice and redress for IGM survivors, namely the statutes of limitations, and therefore falls painfully short of minimal requirements, for example according to CAT, CCPR, CRC, CEDAW, CRPD. In fact, children from Malta continue to be sent to the UK⁷ and Belgium⁸ for IGM procedures, and

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

5 See slide 59, http://intersex.shadowreport.org/public/StopIGM-BanFGM-Rome-2017_web.pdf

6 <https://www.reuters.com/article/britain-lgbt-health/intersex-people-should-not-live-in-fear-of-humiliation-uk-minister-idUSL1N1ZH1LH>

7 2016 CRC UK NGO Report, p. 58,

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

8 2018 CRC Belgium NGO Report, p. 7,

<http://intersex.shadowreport.org/public/2018-CRC-Belgium-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

arguably more countries. We feel it's dangerous and potentially harmful to portray such inadequate legislation as a positive example to be followed in order to prevent IGM, while in fact the practice continues.

Thank you for your consideration.

Kind regards,

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About StopIGM.org

StopIGM.org / Zwischengeschlecht.org, founded in 2007, is an international intersex human rights NGO based in Switzerland. We are the leading NGO in reporting intersex issues to UN Treaty bodies, achieving (in collaboration with local intersex NGOs and advocates) the vast majority of the currently 40 UN Concluding Observations considering serious violations of intersex human rights. We have been active in close to 23 countries in Europe (including Switzerland, Germany, Austria, Italy, France, UK, Ireland, Belgium, Luxembourg, Liechtenstein, Denmark, Spain), Africa, Asia and South America, and have been consulted by various ethics, human rights, government and non-government bodies, including CRC, CAT, CEDAW, CCPR, CRPD, OHCHR, the Swiss National Bioethics Commission (NEK-CNE), the German Ethic Council, WHO, OECD, the Luxembourg Comité interministériel des droits de l'homme presided by the Ministry of Foreign Affairs, and Podemos (Spain). We have presented and taught on intersex issues at various universities, institutions and symposia including the University of Lausanne, University of Padova, the Institut de Formation et de l'Éducation Nationale (IFEN) of Luxembourg, Genital Autonomy, the BanFGM Conference in Rome, and the symposium "After the Recognition of Intersex Human Rights" at the Institute of Advanced Studies (IAS) at the University of Surrey, and participated in the "Intersex/DSD Human Rights, Citizenship and Democracy (EUICIT)" project of the University of Huddersfield. Daniela has also been internationally active in intersex self-help groups for almost 20 years.